

REAL ESTATE EXCHANGE AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO by and between **SCHOOL DISTRICT NO. 7, BUFFALO COUNTY, NEBRASKA**, (hereinafter referred to as "**School District**"), and **NOTZ FARMS, L.L.C.**, a Nebraska Limited Liability Company, (hereinafter referred to as "**Notz Farms**").

RECITAL:

This Real Estate Exchange Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

1. Neither party intends to liquidate their real property and personal property holdings and both parties intend to remain invested in substitute real property and personal property for use in their trade or business or for investment.

2. Both parties intend and shall have the right to acquire the interest in the real property and personal property of the other party as part of an exchange for like-kind property. Both parties are willing to cooperate with the other party to effectuate a tax deferred exchange transaction under §1031 of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. EXCHANGE OF PROPERTIES:

(a) **Notz Farms**, in consideration of the agreements of **School District**, hereinafter set forth, hereby agrees to transfer and convey to **School District**, at a valuation, for the purposes of this Agreement, of One Million Seven Hundred Twenty Thousand Dollars (\$1,720,000.00), the following described real and personal property as follows:

A 128.1 acre tract, herein designated as "Tract 1" on attached Exhibit "A", which 128.1 acre tract is a portion of a 168.1 acre tract owned by Notz Farms and legally described as the North Half of the Northwest Quarter and Lots 1 and 2 in Section 10, Township 8 North, Range 16, West of the 6th P.M., Buffalo County, Nebraska, which 128.1 acre tract (Tract 1) is more particularly set forth on attached Exhibit "A", together with all related irrigation equipment associated therewith and all Farm Service Agency crop base acres currently identified with the 128.1 acre tract, but specifically excepting the Farm Service Agency crop base acres currently identified with the forty acre tract, to be retained by Notz Farms, and as identified on Exhibit "A", and

(b) **School District**, in consideration of the agreements of **Notz Farms**, as hereinafter set forth, hereby agrees to transfer and convey to **Notz Farms**, at a valuation, for the purposes of this Agreement, of One Million Four Hundred Seventy Thousand Dollars (\$1,470,000.00, the following described real and personal property (hereinafter referred to as "Tract 2"):

The Northwest Quarter of Section 5, Township 8 North, Range 15, West of the 6th p.m., Buffalo County, Nebraska, along with all related irrigation equipment associated therewith together with all Farm Services Agency crop base acres currently identified with Tract 2,

NOW, THEREFORE, the parties agree as follows:

1. **DIFFERENCE IN PRICE, MANNER OF PAYMENT AND ALLOCATION.**

(a) Difference in Purchase Price. As a difference in the price of the exchanged property, **School District** agrees to pay to **Notz Farms** and **Notz Farms** agrees to accept from **School District** the sum of Two Hundred Twenty-five Thousand Dollars (\$225,000.00). The difference in the price of the exchanged property shall be paid by certified check at the time of closure.

(b) Allocation of Agreed Value. The parties hereby agree that the allocation of the agreed value of the exchanged property shall be as follows:

Tract 1

| | | |
|-----|-------------------|-----------------------|
| (1) | Real property | \$1,720,000.00 |
| (2) | Personal property | -0- |
| | Total | <u>\$1,720,000.00</u> |

Tract 2

| | | |
|-----|-------------------|-----------------------|
| (1) | Real property | \$1,495,000.00 |
| (2) | Personal property | -0- |
| (3) | Cash | 225,000.00 |
| | Total | <u>\$1,720,000.00</u> |

2. **SURVEY, APPRAISAL AND TITLE.** The **School District** shall, prior to closure and at its expense, commission a survey and an appraisal of Tract 1 setting forth the 128.1 acre tract and the forty acre tract not included in the proposed exchange of properties along with legal

descriptions therefor. A survey of Tract 2 shall not be required. In addition, School District shall furnish title insurance commitments for Tract 1 and for Tract 2 at least seven (7) days prior to closure, with said commitments showing marketable title in the name of each respective party covering the property to be exchanged, free from all liens and encumbrances except easements, covenants and restrictions of record. The cost of the title insurance policies shall be paid by the **School District**. In the event that either party does not have marketable title, that party shall have a reasonable time not to exceed thirty (30) days in which to cure the defects in title after being notified of the defect by the other party and the closing date shall be advanced accordingly as provided herein. If either party shall be unable to cure the defects in title within the time provided, this Agreement shall be terminated and any payment made hereunder shall be returned to the appropriate party and all obligations or liabilities hereunder of either party hereto shall cease. Tract 2 is expressly sold without the requirement of a survey, and the description thereof and the deed shall not be warranted as to any facts which an accurate survey might reveal and **Notz Farms** hereby assumes responsibility for any such survey and hereby acknowledges notice of any such facts which an accurate survey might reveal.

3. **POSSESSION AND CLOSURE.**

(a) **Possession.** Each party shall be entitled to possession of all of the property being transferred to that party hereunder on closure.

(b) **Closure.** The date of closing of this Agreement shall be within five (5) days after the receipt of the title insurance commitments have been received, except that if it is necessary for either party to cure defects in title to the real property, as provided in Paragraph 3 of this Agreement, then the date of closing shall be within five (5) days after such defects are cured.

4. **TAXES AND RENTS.** The party owning the property being exchanged hereunder shall pay all real estate taxes on their property for the calendar year 2013 and all prior years if the closure shall occur during calendar year 2013. If the option period is extended as provided herein and if the closure shall occur during the calendar year 2014, if there are growing crops located on the properties, then the party owning the property on January 1, 2014 shall be entitled to the 2014 rents

and the tenant or tenants farming the properties shall be entitled to harvest said crops. The taxes for the year 2014 shall be paid by the party receiving the Lessor's share of the crops. The current property owner shall also remain liable for all obligations as the Lessor under existing 2014 leases.

5. **DEED AND BILL OF SALE.** Each party agrees to convey the real property being exchanged hereunder by Warranty Deed to the other party free and clear of all liens and encumbrances except easements, covenants, and restrictions of record. Each party agrees to convey the personal property being exchanged hereunder by Bill of Sale to the other party free and clear of all liens and encumbrances. Each party agrees that on or before the date of closing, each party shall, at each party's own cost and expense, execute said Warranty Deed and Bill of Sale and deliver the same to the other party at closure.

6. **RISK OF LOSS.** Risk of loss or damage to the properties being exchanged hereunder shall remain on the party owning the property prior to the exchange until the date of closing and shall pass to the other party at the time of closing.

7. **REPRESENTATIONS.** The **School District** has personally inspected the premises to be received by it upon closure of this exchange, including all improvements, fixtures and personal property passing to it as provided herein, and the **School District** enters into this agreement solely on the basis of its own visual inspection and investigation of the same and accepts the same in the exact condition in which they now are, and makes this agreement relying upon no representation or warranties of the other party, other than such as are set forth herein. **Notz Farms** has personally inspected the premises to be received by it upon closure of this exchange, including all improvements, fixtures and personal property passing to it as provided herein, and **Notz Farms** enters into this agreement solely on the basis of its own visual inspection and investigation of the same and accepts the same in the exact condition in which they now are, and makes this agreement relying upon no representation or warranties of the other property, other than such as are set forth herein.

8. **LIKE-KIND EXCHANGE.** The parties hereto intend to effect a tax deferred exchange under Internal Revenue Code §1031 of the Internal Revenue Code of 1986, as amended. Each party agrees to cooperate with the other party and to execute and deliver any and all documents

and take such other action as may be necessary to effectuate a tax deferred exchange transaction under Internal Revenue Code §1031.

9. **REMEDIES ON DEFAULT.** Time is of the essence of this Agreement. In the event of the default, refusal, or failure to consummate this exchange of real estate of either party hereto, the other party may utilize such legal or equitable remedies as are available to that party by reason of such default, refusal, or failure.

10. **DOCUMENTARY TAX.** Each party agrees to pay the documentary tax required to be paid by such party upon closure.

11. **BENEFITS.** This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties hereto.

12. **BROKERAGE FEES.** **Notz Farms** represents and warrants that no broker has been employed by it in connection with this Agreement and the property owned by it and subject hereto, and **Notz Farms** agrees to indemnify and hold harmless the **School District** from any claims for brokerage fees or other commissions which may be made against the **School District** by any person claiming to be entitled to a fee or commission because of a contract with **Notz Farms**. **School District** represents and warrants that all broker fees for brokers employed by it in connection with this Agreement and the property owned by it shall be paid by **School District**, and **School District** agrees to indemnify and hold harmless **Notz Farms** from any claims for brokerage fees or other commissions which may be made against the **Notz Farms** by any person claiming to be entitled to a fee or commission because of a contract with **School District**.

13. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties regarding the subject matter hereof, except for warranties and representations of the parties. This Agreement shall not be modified, amended, altered or changed except by a written document agreed to and signed by the parties hereto. The cost of preparation of this agreement shall be paid for by **School District**.

14. **SURVIVAL.** All agreements, covenants, undertakings, representations, and warranties of the parties hereto and extended hereunder shall be deemed to continue and survive closing hereunder.

15. **INVALIDITY.** Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition, without invalidating the remainder of this Agreement.

16. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

17. **TIME OF ESSENCE.** Time is of the essence of this contract and in the performance hereunder of the respective obligations of the parties.

18. **CONTINGENCIES.** Anything contained in this Agreement to the contrary notwithstanding, the parties agree that this Agreement is contingent upon having all liens or encumbrances against either of the respective parties' property, if any, released on or before the date of closing in order to permit such properties to be transferred free and clear of all liens and encumbrances except for easements, restrictions or covenants of record. In the event that this contingency should not be completed within the time contemplated therefore, or is not capable of being performed at the date of closing, then this Agreement shall terminate and the parties hereto shall be relieved of any obligations hereunder.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates set forth below.

NOTZ FARMS, L.L.C.

**SCHOOL DISTRICT NO. 7,
BUFFALO COUNTY, NEBRASKA**

By _____
Patricia A. King, Its Manager

By _____
Its _____

STATE OF IOWA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__ by **Patricia A. King**, Manager, on behalf of Notz Farms, L.L.C., a Nebraska Limited Liability
Company..

Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF BUFFALO)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____ on behalf of School District No. 7, Buffalo County, Nebraska.

Notary Public