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SUBMITTED	NEBRASKA TITLE COMPANY-OM

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
**2015-13801**  
2015 Jun 12 03:14:30 PM  
*Floyd J. Howerton*  
REGISTER OF DEEDS  


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## AGREEMENT

This Agreement (the "**Agreement**") is made and entered into as of June 12, 2015 by and between Art Camenzind Farms, LLC, a Nebraska limited liability company ("**Camenzind**"), and FMR Ygnacio I, LLC, a Delaware limited liability company ("**FMR**").

WHEREAS, Camenzind is the owner of the real estate legally described on Exhibit "A" attached hereto (the "**Camenzind Tract**"); and

WHEREAS, concurrently with the execution of this Agreement, FMR acquired fee simple title to the real estate legally described on Exhibit "B" attached hereto (the "**FMR Tract**"); and

WHEREAS, the owner of the FMR Tract has an access easement over an existing private driveway on the Camenzind Tract (the "**Private Driveway**") pursuant to the terms of a Survivorship Warranty Deed from Floyd J. Howerton, Jr. and Claudia L. Howerton, husband and wife, to Victor T. Matthies and Marcia L. Matthies, husband and wife, recorded in the Register of Deeds of Sarpy County, Nebraska on October 8, 1982 in Book 157, Page 2222 (the "**Easement**"); and

WHEREAS, in the event Camenzind or a future owner of the Camenzind Tract desires to eliminate the Private Driveway in connection with the development of the Camenzind Tract, then it must obtain a release of the Easement from FMR or the then owner of the FMR Tract; and

WHEREAS, the parties have agreed to enter into this Agreement to establish the conditions upon which FMR or the future owner of the FMR Tract would release the Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Development of Camenzind Tract.** If Camenzind or any future owner of the Camenzind Tract (individually and collectively, an "**Owner**") elects to plat and develop the Camenzind Tract and to install publicly dedicated rights-of-way ("**Public Streets**") to provide access to the individual lots within the developed Camenzind Tract, then such Owner agrees that the Public Streets will also provide access to the FMR Tract. Prior to submitting a preliminary plat to the City of Papillion ("City") for approval, Owner shall provide FMR or the then owner of the FMR Tract (the "**Easement Holder**") with copies of the preliminary plat and other drawings and specifications showing the proposed location of the Public Streets. The location of the Public Streets shall be acceptable to Easement Holder in its reasonable discretion and shall include two (2) curb cuts onto the FMR Tract (if permitted by the City) in the minimum

agreed upon Curb Cuts on the preliminary plat of the Camenzind Tract and any final plat of the Camenzind Tract, and will not change the location of the Public Streets or the Curb Cuts without the prior written consent of Easement Holder. It is understood and agreed that the City may only permit one (1) Curb Cut and may revise the location of the Curb Cuts as requested by FMR. The Owner shall use all reasonable efforts to encourage the City to permit two (2) Curb Cuts in locations acceptable to FMR.

Owner, at its sole cost and expense, will (i) construct the Public Streets, including the Curb Cuts in the agreed upon locations, in a good and workmanlike manner, in accordance with all applicable governmental laws, ordinances, regulations and codes and (ii) once construction of the Public Streets is commenced, diligently prosecute completion of the same.

At all times during the construction of the Public Streets, the Private Driveway will remain open and so that Easement Holder will have vehicular access, ingress and egress to and from the FMR Tract, to, over, through and upon the Private Driveway. Notwithstanding the foregoing, if during the development of the Camenzind Tract it becomes necessary to close or remove the Private Driveway, Owner will provide continuous reasonable access to the FMR tract.

2. **Release of Easement.** Upon completion of the Public Streets, including the Curb Cuts in the agreed upon locations, Owner will provide Easement Holder with notice of such completion. Within ten (10) days after receipt of such notice, Easement Holder will execute and deliver to Owner a release of the Easement in recordable form.

3. **Miscellaneous.**

(a) This Agreement shall run with the land and be binding on the successors and assigns of the parties hereto.

(b) This Agreement shall be construed under and in accordance with the laws of the State of Nebraska and any action hereunder shall be brought only in the state or federal court having jurisdiction on Sarpy County, Nebraska.

(c) This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings both written and orally between the parties with respect to the subject matter contained in this Agreement. No amendment or waiver of any provision of this Agreement, nor consent to any departure by any party from this Agreement, shall in any event be effective unless the same shall be in writing and signed by the party or parties against whom such amendment, waiver, consent or departure is sought to be enforced and then such amendment, waiver, consent or departure shall be effective only in the specific instance and for the specific purpose for which given.

(d) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(e) This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

ART CAMENZIND FARMS, LLC SIGNATURE PAGE TO AGREEMENT

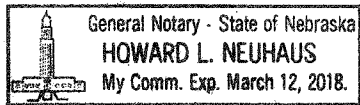
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year above written.

ART CAMENZIND FARMS, LLC, a Nebraska limited liability company

By: *Arthur Camenzind*  
Arthur Camenzind, Managing Member

STATE OF NEBRASKA     )  
  ) SS.  
COUNTY OF SARPY     )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2015, by Arthur Camenzind, the Managing Member of Art Camenzind Farms, LLC, a Nebraska limited liability company, on behalf of the company.

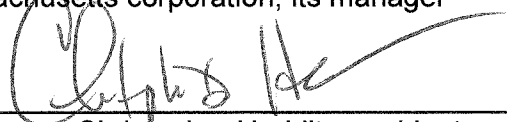


*Howard L. Neuhaus*  
Notary Public

FMR YGNACIO I, LLC SIGNATURE PAGE TO AGREEMENT

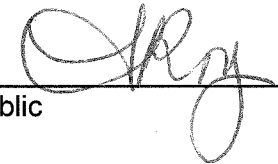
FMR YGNACIO I, LLC, a Delaware limited liability company

By: Fidelity Corporate Real Estate, Inc., a Massachusetts corporation, its manager

By:   
Christopher Horblit, president

STATE OF MA )  
COUNTY OF Plymouth ) SS.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2015, by Christopher Horblit, president of Fidelity Corporate Real Estate, Inc., a Massachusetts corporation, manager of FMR YGNACIO I, LLC, a Delaware limited liability company.

  
Notary Public



B.H.I. PROPERTIES, INC. SIGNATURE PAGE TO AGREEMENT

CONSENT

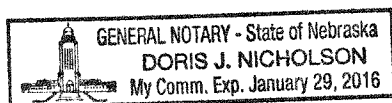
The undersigned has the right to purchase the Camenzind Tract pursuant to the terms of the certain real estate purchase agreement dated as of December 4, 2014 between Camenzind and the undersigned (the "Purchase Agreement"). The undersigned, on behalf of itself and any assignee of its interest in the Purchase Agreement, hereby consents to the terms of this Agreement.

B.H.I. PROPERTIES, INC.,  
a Nebraska corporation

By: *Gerald L. Torczon*  
Gerald L. Torczon, President

STATE OF NEBRASKA        )  
  ) SS.  
COUNTY OF Sarpy        )

The foregoing instrument was acknowledged before me this 11 day of June, 2015, by Gerald L. Torczon, the President of B.H.I. Properties, Inc., a Nebraska corporation, on behalf of the corporation.



*Doris J. Nicholson*  
Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF CAMENZIND TRACT**

Tax Lot 3A and Tax Lot 4 in Section Twenty-Eight (28), Township Fourteen (14) North, Range Twelve (12), East of the 6th P.M., Sarpy County, Nebraska.

## **EXHIBIT "B"**

### **LEGAL DESCRIPTION OF FMR TRACT**

Tax Lot 4A and Tax Lot 5, in Section Twenty-One (21), Township Fourteen (14) North, Range Twelve (12), East of the 6th P.M., Sarpy County, Nebraska; and the North 198 feet of Tax Lot 3, located in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section Twenty-Eight (28), Township Fourteen (14) North, Range Twelve (12) East of the 6th P.M., Sarpy County, Nebraska.

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