



Contract: Boilerplate

Section 10

Return to:

Steven H. Sackmann  
Sackmann Law Office  
P. O. Box 409 - 455 E. Hemlock, Suite A  
Othello, Washington 99344

### REAL ESTATE CONTRACT

Auditor file number of document to be released or assigned  
(if applicable) \_\_\_\_\_

1. Additional references on page \_\_\_\_\_ of document

Grantor(s)

1. Kitzke Investment Company, Inc., as General Partner of  
Sonshine Orchards, L.P.

Grantee(s)

1. \_\_\_\_\_

2. \_\_\_\_\_

Additional Grantee(s) on page \_\_\_\_\_ of document

Legal Description (lot, block, plat or section, township, range)

1. \_\_\_\_\_

Additional legal description on page \_\_\_\_\_ of document

Assessor's property tax parcel or account number

1. \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between KITZKE INVESTMENT COMPANY, INC., as General Partner of SONSHINE ORCHARDS, L.P., hereinafter referred to as "SELLER", and \_\_\_\_\_, hereinafter referred to as "PURCHASER".

WITNESSETH:

SELLER agrees to sell to PURCHASER and PURCHASER agrees to purchase from SELLER, the following described real estate with the appurtenances, situate in the County of Benton, STATE OF WASHINGTON, to wit:

See attached Exhibit "A".

TOGETHER WITH all improvements and fixtures situated on the above described real property on the date of this Agreement, unless herein otherwise provided.

TOGETHER WITH all water and water rights including ditches, appropriations, franchises, privileges, permits, licenses and easements that are on, connected with, or usually had and enjoyed in connection with the above described property.

TOGETHER WITH such right, title and interest as Seller has or may have, or may be able to convey, with respect to rights and services appurtenant to the above described real property, including but not limited to utility services and other services and agreements directly benefiting the above described property.

SUBJECT TO:

Terms, covenants and conditions contained in any Application for Current Use Classification, entered into pursuant to RCW 84.34 (including potential liability for future applicable taxes, special benefit assessments levied by local governments, penalties and interest upon breach of, or withdrawal from, said classification).

Rights reserved in Federal patents or state deeds; reservations, restrictions, land use and zoning laws; plat dedications, restrictive and protective covenants, easements and rights-of-way of record.

The laws of the United States of America and State of Washington relative to the above described real property and the Columbia Basin Irrigation Project and the terms of any recordable contracts entered into pursuant to such laws and subject to liability for all charges and assessments levied by Irrigation Districts and/or the U S Bureau of Reclamation.

Homeowner's Irrigation System Agreement with Right of Way Deed and Assessment Lien Provisions dated February 8, 2010, and recorded November 12, 2010, under Auditor's File No. 2010-033359, records of Benton County, Washington.

Farm Lease dated the \_\_\_\_ day of \_\_\_\_\_, 2011.

1. **PURCHASE PRICE:** The "Sale Price" shall be calculated by determining the amount of Purchaser's bid at the auction sale and adding a Purchaser's Premium equal to ten percent (10%) of that amount. The Purchaser shall also be responsible as part of the purchase price for paying the Growing Costs in the amount of \_\_\_\_\_ incurred by the Seller through the date of possession. The growing costs shall be paid by Purchaser at closing.

Bid:	\$ _____
Purchaser's Premium:	\$ _____
<b>SALES PRICE:</b>	<b>\$ _____</b>

2. **PAYMENT OF PURCHASE PRICE:** PURCHASER shall pay SELLER \$\_\_\_\_\_, including earnest money, as a down payment on the closing date, with the unpaid balance payable as follows:

PURCHASER shall pay SELLER the unpaid balance in the sum of \$\_\_\_\_\_ together with interest at 5.5% annum, calculated from the closing date, in annual installments in the sum of \$\_\_\_\_\_ including interest, with the first payment commencing one year from the closing date. The entire balance of principal and interest shall be paid in full on or before Ten (10) years from the closing

date. The entire real estate contract is attached to this agreement and is a part of this agreement.

3. **PLACE OF PAYMENT:** SELLER and PURCHASER agree that all payments to be made hereunder shall be made at \_\_\_\_\_ or at such other place as SELLER may direct in writing.

4. **LATE PAYMENTS:** SELLER and PURCHASER agree that in the event of nonpayment of a purchase price installment in the full amount and at the time(s) required by this Agreement, with such nonpayment continuing for more than Ten (10) days, then there shall be a late charge equal to Five Percent (5%) of the late payment, from the due date until the full amount of such delinquent purchase price installment is paid in full. No default in the payment of a purchase price installment shall be deemed cured until such installment, plus the late charge provided in this section, are paid in full.

5. **PRIOR ENCUMBRANCES:** SELLER and PURCHASER agree that PURCHASER is not assuming the prior indebtedness owed to \_\_\_\_\_. SELLER covenants and agrees that the unpaid balance due on said prior encumbrance shall never exceed the unpaid balance due as per the terms and conditions of this Contract and SELLER agrees to keep the indebtedness current. PURCHASER shall have the right, but not the obligation to cure any default by SELLER and shall be entitled to interest at the rate of Twelve Percent (12%) per annum on any expenditures made to cure default. If PURCHASER prepays pursuant to the terms of this Agreement and there is still existing at the time of that prepayment the encumbrance previously set forth, SELLER covenants and agrees that any unpaid balance due on said prior encumbrance shall be paid.

SELLER shall obtain and file with the Escrow Agent promises to release any existing mortgages on the purchase property when PURCHASER pays the purchase price in full.

6. **POSSESSION AND RISK:** PURCHASER shall be entitled to possession of said premises on the date of closing and PURCHASER assumes all risk of damage to any improvements upon the premises, or of the taking of any part of the property for public use from and after said date.

7. **CONDITIONAL SALE:** Title to the above-described property shall remain vested in SELLER at all times during the effective term of this Contract, and shall not vest in PURCHASER until all sums payable to SELLER hereunder are fully paid, and all terms, covenants, and conditions of this Contract are fully performed.

8. **TAXES AND ASSESSMENTS:** PURCHASER agrees to pay before delinquency all taxes and assessments legally levied against the said property before the same shall become delinquent.

9. **FIRE INSURANCE:** PURCHASER agrees to keep any buildings and improvements now on or hereafter placed upon the premises unceasingly insured against loss or damage by fire and other extended risk casualties, to the full insurable value thereof in an insurance company satisfactory to SELLER for the benefit of any mortgagee and SELLER and PURCHASER as their interests may appear, until the purchase price is fully paid, and to provide SELLER with proof of payment of insurance premiums upon request.

10. **TITLE INSURANCE:** SELLER will immediately procure and deliver to PURCHASER a title policy insuring PURCHASER to the full amount of the purchase price against loss or damage occasioned by reason of defect in, or encumbrance against, SELLER'S title to the premises not assumed by PURCHASER, or as to which the conveyance hereunder is not to be subject.

11. **BREACH OF COVENANTS:** In the event that PURCHASER shall fail to pay before delinquency any taxes or assessments or any payments required to be made on account of any assumed mortgage, contract or encumbrance, or fails to insure the premises, as above provided, SELLER may pay such taxes and assessments, make such payments and cure any defaults, and effect such insurance as may be necessary and any amounts paid by SELLER shall be deemed a part of the purchase price and become payable by PURCHASER to SELLER at the rate of Twelve Percent (12%) per annum until paid, without prejudice to other rights of SELLER by reason of such failure to pay.

12. **INSPECTION OF PREMISES:** PURCHASER agrees that full inspection of said real estate has been made and that neither SELLER nor his assigns shall be held to any covenant respecting the condition of any improvements thereon, nor shall PURCHASER or SELLER or the assigns of either, except as otherwise specifically provided herein, be held to any covenant or agreement for alterations, improvements, or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this Contract.

13. **SELLER'S REMEDIES:** In the event PURCHASER is in default of this Contract, SELLER may, at SELLER'S election, exercise the following remedies:

- (a) **Suit for Delinquencies.** SELLER may institute suit for any sums then due and payable under this Contract as of the date of the judgment and any sums which have been advanced by SELLER pursuant to the provisions of this Contract, together with interest on

all of said sums at the rate or rates specified in this Contract from the date each such amount was advanced or due, as the case may be, to and including the date of collection;

(b) **Acceleration.** Upon giving PURCHASER not less than Fifteen (15) days written notice of SELLER'S intent to do so (within which time any monetary default may be cured without regard to the acceleration), if the default is in the nature of a failure to timely pay any principal, interest, insurance premium, tax, or other sum of money required to be paid herein; or, is a conveyance, transfer or assignment of the Property, or any portion thereof, or of this Contract or any interest therein in any manner other than as permitted by the terms of this Contract; or, constitutes PURCHASER committing or permitting waste on or to the Property, SELLER may declare the entire unpaid balance of the Purchase Price and all interest then due thereon immediately due and payable and institute suit to collect such amounts, together with any sums advanced by SELLER pursuant to the provisions of this Contract together with interest on all of said sums at the rate or rates specified in this Contract from the date each such amount was advanced or due, as the case may be, to and including the date of collection;

(c) **Forfeiture and Repossession.** SELLER may cancel and render void all rights, titles and interests of PURCHASER and PURCHASER'S assigns and successors in this Contract and in the Property (including all of PURCHASER'S then existing rights, interests and estates therein and improvements thereon) by giving a Notice of Intent to Forfeit pursuant to RCW Ch 61.30, as now or hereafter amended, and said cancellation and forfeiture shall become effective if the default therein specified has not been fully cured within Ninety (90) days thereafter and SELLER gives and records a Declaration of Forfeiture pursuant to RCW Ch 61.30, as now or hereafter amended. Upon forfeiture of this Contract, SELLER may retain all payments made hereunder by PURCHASER and may take possession of the Property Ten (10) days following the date this Contract is forfeited and summarily eject PURCHASER and any person or persons having possession of the Property by, through or under PURCHASER who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event PURCHASER or any person or persons claiming by, through or under PURCHASER who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture remain in possession of the Property more than Ten (10) days after such forfeiture, PURCHASER,

or such person or persons, shall be deemed tenants at will of SELLER and SELLER shall be entitled to institute an action for summary possession of the Property and may recover from PURCHASER or such person or persons in such proceedings, the fair rental value of the Property for the use thereof from and after the date of forfeiture, plus costs, including SELLER'S reasonable attorneys' fees;

(d) **Specific Performance.** SELLER may institute suit to specifically enforce any of PURCHASER'S covenants hereunder, and the same may include redress by mandatory or prohibitive injunction;

(e) **Abandonment.** In the event that PURCHASER abandons the property while in default, SELLER may take immediate possession of the property for the purpose of protecting and preserving the property and may mitigate damages by renting or operating this property during the period of enforcement of SELLER'S rights under this Contract, without prejudicing SELLER'S remedies under this Contract;

All the foregoing remedies are cumulative and are not mutually exclusive and may be exercised in conjunction with each other to the extent permitted by law or in equity and shall be in addition to other rights or remedies granted by law or in equity for breach of this Contract; PROVIDED, HOWEVER, except as provided in this Contract with respect to PURCHASER'S sale, conveyance, assignment or transfer of the Property, or any portion thereof, or of this Contract, or any interest therein, in a manner other than as permitted by this Contract, SELLER shall not have the right to accelerate the remaining balance of the Purchase Price in the event SELLER elects to forfeit PURCHASER'S interest in the Property and such forfeiture is being enforced or is completed.

14. **PURCHASER'S REMEDIES:** In the event SELLER shall default in any of SELLER'S obligations under this Contract and such default continues for Thirty (30) days after PURCHASER gives SELLER written notice specifying the nature thereof and the acts required to cure the same, PURCHASER shall have the right to specifically enforce this Contract, institute suit for PURCHASER'S damages caused by such default, or pursue any other remedy which may be available to PURCHASER at law or in equity on account of SELLER'S default.

15. **ABANDONMENT:** In the event that PURCHASER abandons the property while in default, SELLER may take immediate possession of the property and may mitigate damages by renting or operating this property during the period of enforcement of SELLER'S rights under this Contract, without prejudicing SELLER'S remedies under this Contract.

16. **WAIVER:** Any extension of time in payments or acceptance of part thereof, or failure of SELLER to enforce promptly any other breach of this Contract by PURCHASER shall not be construed as a waiver on the part of SELLER of the strict performance of all of the covenants and conditions herein, and shall not prejudice any of SELLER'S remedies.

17. **PERSONAL PROPERTY:** Title to personal property included in this sale shall remain in SELLER until PURCHASER has fully performed this Contract. PURCHASER'S rights to the property shall be subject to all applicable terms and conditions of this Contract. Personal property shall be maintained in good condition and not disposed of by PURCHASER, without written consent of SELLER, and excepting vehicles or equipment, the intended use of which requires temporary removal, shall be kept on the property herein sold.

18. **IRRIGATION EQUIPMENT:** Title to any irrigation equipment included in this sale shall remain with SELLER until PURCHASER has fully performed this Contract. PURCHASER'S rights to the irrigation equipment shall be subject to all applicable terms and conditions of this Contract. Irrigation equipment shall be maintained in good condition and not disposed of by PURCHASER, without written consent of SELLER, unless replaced with unencumbered equipment of like or better quality and all equipment shall be kept on the property herein sold.

19. **SECURITY INTEREST:** PURCHASER hereby grants SELLER a Purchase Money Security Interest in the personal property included in this sale and in all rents received by PURCHASER by reason of leases of the property. PURCHASER shall have the right to collect and utilize all rents until and unless PURCHASER defaults on the Contract, in which case, SELLER, without notice, shall be entitled to exercise all remedies to collect the rents. SELLER shall have all rights and remedies as provided for in the Uniform Commercial Code in effect at the date of any default by PURCHASER. PURCHASER authorizes SELLER to record a UCC Financing Statement evidencing SELLER'S security interest in the personal property.

20. **CONDITION OF PREMISES:** PURCHASER shall maintain the property and all improvements now or later placed on the property in a good state of repair and shall not make any material alterations without the written consent of SELLER.

21. **USE AND WASTE:** PURCHASER shall not allow or commit any waste of or upon the premises and shall not use the premises for any illegal purpose.

22. **FARM PROPERTY:** PURCHASER shall farm all farm and/or orchard land in a good husbandlike manner, according to the customary standards of farming in the area in which the property is situated without unnecessary interruptions or

delays. If PURCHASER is in default on any payment required by this Contract, a breach of this provision shall entitle SELLER, upon the giving of Three (3) days notice to go upon the property and perform such services and acts as are necessary to comply with this provision. The necessary costs and expenses of these services and acts shall be considered an indebtedness immediately payable to SELLER which SELLER has the right to collect together with interest at the rate of Twelve Percent (12%) per annum. PURCHASER shall have the right to correct any deficiencies during the Three (3) day period. In the event this Contract is forfeited, all growing crops shall be vested in SELLER without any right of PURCHASER to reclamation or compensation for money paid, improvements or growing crops.

23. **CONDEMNATION:** If the property, or any part thereof is condemned or taken by power of eminent domain by any public or quasi-public authority, SELLER or PURCHASER or both may appear and defend or prosecute in any such proceeding. All compensation or awards received from the condemning authority by either SELLER or PURCHASER shall be applied first to the payment of the expenses of litigation, next to the acquisition and installation costs of any replacements or restorations of condemned property requested by PURCHASER in writing not later than Fifteen (15) days following the date possession is required to be surrendered by the condemning authority, next to the reduction of the unpaid balance of this Contract in the inverse order of its maturity, next to any other sums then due to SELLER (including accrued and unpaid interest and reimbursable advances and expenses), and the surplus, if any, shall be paid to PURCHASER. All of the replacements and restorations shall have the same purpose and function as the condemned property, except as SELLER may otherwise consent in writing. Any condemnation awards used to restore or replace any of the Property shall be deposited in a disbursement account and disbursed in the manner specified herein for insurance proceeds following an insured casualty. No total or partial taking of the Property by condemnation shall constitute a failure of consideration or provide a basis for the rescission of this Contract.

24. **TRANSFER OF PURCHASER'S INTEREST:** If PURCHASER'S title to the property, or any portion thereof, is conveyed to any person, SELLER, may, at it's option: (a) following any required notice, declare the entire remaining balance of the Purchase Price and all accrued and unpaid interest thereon immediately due and payable, or (b) adjust the interest rate of this Contract, effective as of the date of the transfer. SELLER may elect one of the said options by written notice to PURCHASER within Thirty (30) days after being advised in writing of the sale and the transferee, and if such election is not made within that period, the above rights for the transaction so described shall be deemed waived. If SELLER elects to adjust the interest rate, the entire outstanding balance of this Contract may be prepaid at the closing of such conveyance. For the purposes of this Contract, a "conveyance" of the "Purchaser's title" shall include a transfer by real estate contract, vendee's assignment, deed, forfeiture, foreclosure,

sheriff's sale, trustee's sale, deed in lieu of any such involuntary sale, lease with purchase option or for a term in excess of three years (including extension options), and, if PURCHASER is a corporation or partnership, a voluntary or involuntary transfer or series of transfers of any shares of partnership interests which results in a change of Fifty Percent (50%) or more of the voting control of such entity (from the composition thereof as of the date of this Contract). A conveyance of PURCHASER'S title shall not include: (a) a lease or other transfer of possession of the property for three years or less without options to purchase the property or any interest therein; (b) a transfer to PURCHASER'S spouse or children; (c) a transfer by devise, descent, or operation of law resulting from the death of any person comprising PURCHASER; (d) a transfer into an inter vivos trust in which PURCHASER is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or (e) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or property settlement agreement which a spouse of any person comprising in PURCHASER retains or acquires the property. No transfer of the property or any portion thereof shall release the transferring person from liability on this Contract unless such release is expressly acknowledged by SELLER in writing.

25. **ASSUMPTION OF OBLIGATIONS BY ASSIGNEE:** Any sale, conveyance, assignment or transfer of PURCHASER'S interest hereunder or in the Property, or any portion thereof, shall constitute an assumption by the assignee of PURCHASER'S obligation hereunder. SELLER shall have the right to enforce any such obligation against the assignee directly, whether or not SELLER releases PURCHASER of PURCHASER'S obligations under this Contract. This provision shall be self-operating and shall not require the execution of a formal assumption agreement by the assignee.

26. **NON-RELEASE OF PURCHASER:** Any sale, conveyance, assignment or transfer of PURCHASER'S interest hereunder or in the Property, or any portion thereof, or of the interest of any assign or successor in interest of PURCHASER, shall not result in any release of the obligations of PURCHASE, unless SELLER, in writing, agrees to such release.

27. **REMOVAL OF TIMBER; MINERALS, INCLUDING SOIL, AND GRAVEL:** PURCHASER shall not cut or remove any timber or forest products from the property; extract, process, mine, or otherwise exploit any gas, mineral, or other valuable deposit on or under the property; or remove or permit removal of any soil or gravel from the property, without SELLER'S prior written consent. SELLER shall have no obligation to give such consent, but if given may be conditioned by SELLER on such conditions deemed reasonable to SELLER, including but not limited to, application of any sale proceeds to the unpaid purchase price balance.

28. **INTEGRATED DOCUMENT:** SELLER AND PURCHASER agree that there are no verbal or other agreements which modify or affect this agreement unless approved in writing by the parties.

29. **SUCCESSORS IN INTEREST:** This Contract shall inure to the benefit of and be binding upon the heirs, assigns, and successors in interest of the parties hereto.

30. **COSTS AND ATTORNEY FEES:** If either party shall be in default under this Contract, the non-defaulting party shall have the right, at the defaulting parties' expense, to retain an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this Contract. The defaulting party hereby covenants and agrees to pay all costs and expenses so incurred by the non-defaulting party including but without limitation, arbitration and court costs, collection agency charges, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation), and the failure of the defaulting party to promptly pay the same shall cause a failure of cure of the specified default and shall in itself constitute a further and additional default. In the event either party hereto institutes any action (including arbitration) to enforce the provisions of this Contract or for any cause arising out of this Contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for all of its court costs and reasonable attorneys' fees and fees or costs normally charged or advanced by such attorneys for items such as reports, photocopies, telephone tolls, mileage, travel, boarding, expert fees, accounting fees or other advanced costs and fees, including such costs and fees that are incurred on appeal and in the enforcement in any judgment. In the event it is reasonably necessary for either party to employ counsel or incur expense, in or out of court in any bankruptcy or reorganization proceedings, to enforce, establish or protect such party's rights hereunder, such party who prevails therein or so protects or establishes such party's rights hereunder shall be entitled to recover all reasonable attorneys' fees and expenses so incurred. All payments and reimbursements required by this paragraph shall be due and payable on demand, and may be offset against any sums owed to the party so liable in order of maturity, and shall bear interest at the rate of Twelve percent (12%) per annum, from the date of demand to and including the date of collection or the due date of any sum against which the same is offset, as the case may be.

31. **APPLICABLE LAW/CONSTRUCTION/VENUE:** This Contract shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Contract is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Contract shall be laid in the county in which all or some of the Property is situated.

All sums herein referred to shall be calculated by and payable in the lawful currency of the United States.

32. **WARRANTY FULFILLMENT DEED:** SELLER agrees to execute, at closing, a Warranty Fulfillment Deed, conveying the property described herein, free of encumbrances, except those above mentioned and except those which are placed against the property after the date of this Contract by persons other than SELLER. SELLER hereby authorizes the holder of said deed to deliver the same to PURCHASER upon SELLER receiving payment in full of the purchase price and interest herein.

33. **INDEMNITY OF LIABILITY:** PURCHASER agrees to indemnify and save harmless SELLER against any liability, direct or indirect, arising out of PURCHASER'S use of the premises during the term of this Contract or any extension thereof, or PURCHASER'S occupancy of the premises.

34. **ESCROW:**

a. **ESCROW HOLDER:** SELLER and PURCHASER designate \_\_\_\_\_ of \_\_\_\_\_, Washington, as their Escrow Holder and have contemporaneously herewith executed Escrow Instructions in form satisfactory to Escrow Holder, which Escrow Instructions are by this reference incorporated herein as though fully set forth herein as a part of this Contract. All purchase price installments including prepayment(s) thereof shall be paid to Escrow Holder and shall be credited to the account of SELLER pursuant to the Escrow Instructions.

b. **WARRANTY DEED:** SELLER contemporaneously deposits with Escrow Holder a Statutory Warranty Fulfillment Deed ("Deed") to the property containing an accurate legal description of the property and making title to the property subject only to burdens and encumbrances hereinbefore specified. When the entire unpaid purchase price balance, interest and late charges, if any, and all other obligations of PURCHASER under this Contract have been fully and completely performed, Escrow Holder shall deliver the Deed to PURCHASER. PURCHASER has seen and reviewed the Deed deposited in escrow and approved its form and content as sufficient to convey title to the property as warranted by SELLER.

c. **CLOSURE OF ESCROW:** If SELLER gives and records a Declaration of Forfeiture forfeiting PURCHASER'S interest in this Contract and the property, then upon written demand of SELLER to Escrow Holder, all of the documents deposited with Escrow Holder, in escrow, shall be delivered to SELLER or SELLER'S designee no later than Sixty (60) days following recording of the Declaration of Forfeiture and the escrow shall be closed and Escrow Holder thereupon released of all further obligations to SELLER and PURCHASER.

35. **HAZARDOUS SUBSTANCE WARRANTY:** SELLER represents and warrants that SELLER has no knowledge or information that hazardous substances as defined in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or THE HAZARDOUS WASTE CLEANUP-MODEL TOXIC CONTROL ACT (RCW 70.105(d)) have at any time been stored, dumped, or deposited on the premises being sold to PURCHASER.

SELLER shall defend, indemnify and hold PURCHASER completely harmless from any breach or violation of the warranties contained in this paragraph. Indemnification includes without limitation, any and all costs or expense of any kind or nature incurred because of any investigation of the property or any clean-up, removal or restoration mandated by any federal, state or local agency or political subdivision. This indemnification shall specifically include any and all costs due to hazardous substances that flow, diffuse, migrate or percolate into, onto or under the property prior to the date of this Contract.

36. **COMPLIANCE WITH ENVIRONMENTAL LAWS:** PURCHASER shall not cause, permit or allow any hazardous substance to be brought upon, kept or used in, on or about the Property by PURCHASER, or PURCHASER'S family, agents, employees, contractors, licensees, invitees or lessees, except for such hazardous substances as may be necessary to PURCHASER'S use of the Property. Any hazardous substances which, by the foregoing provision, are permitted to be brought upon, kept or used in, on or about the Property and all containers therefore, shall be used, kept, stored and disposed of in a manner that complies in all respects with all Federal, State and local laws or regulations applicable to hazardous substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 USC §9601 et seq., the Super Fund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act ("RCRA") 42 USC §9601 et seq., the Clean Water Act, 33 USC §1317, §1321, the Clean Air Act, 42 USC §7412, the Toxic Substances Control Act, 15 USC §2606, the Washington Model Toxics Control Act ("MTCA") RCW Ch. 70.1050, State Environmental Policy Act ("SEPA") RCW Ch. 43.216, and Hazardous Waste Management Act, RCW Ch. 70.105, including all amendments and recodifications thereof, all regulations promulgated thereunder and all future laws and regulations enacted by any governmental authority respecting hazardous substances. The term "hazardous substance(s)" as used herein means any "hazardous waste" as defined by RCRA and the Hazardous Waste Management Act, as amended from time to time and regulations promulgated thereunder; any "hazardous substance" as defined by CERCLA, the Hazardous Waste Management Act and SEPA, as amended from time to time and any regulations promulgated thereunder; any oil, petroleum products and their bi-products; and any substance or waste that is or becomes regulated by any Federal, State or local government authority.

PURCHASER shall defend, indemnify and hold SELLER completely harmless from any breach or violation of the prohibitions imposed upon PURCHASER by this paragraph. Indemnification includes, without limitation, any and all costs or expense of any kind or nature incurred because of any investigation of the Property or any clean-up, removal or restoration mandated by any Federal, State or local agency or political subdivision. This indemnification shall specifically include any and all costs due to hazardous substances that flow, diffuse, migrate or percolate into, onto or under the Property after the date of this Contract.

37. **ASSIGNMENT OF GOVERNMENT PROGRAM:** SELLER hereby conveys and assigns to PURCHASER all of SELLER'S right, title and interest in and to all government farm program payments and benefits, including but not limited to, any deficiency or set-aside program payments. Such assignment includes the right to receive all future payments respecting the property currently bid into and accepted in such government programs and specifically includes any such payments made and remaining due and payable. PURCHASER in consideration of such assignment shall timely and fully perform all obligations arising from or associated with said programs.

38. **ASSIGNMENT OF WATER RIGHTS:** SELLER hereby conveys and assigns to PURCHASER all of SELLER'S right, title and interest in and to all water rights whether documented by permit or certificate and SELLER shall execute any further assignment documents necessary to transfer such water rights.

IN WITNESS WHEREOF, SELLER and PURCHASER have signed this Contract effective the day and year first above written.

KITZKE INVESTMENT COMPANY, INC.,  
as General Partner of SONSHINE  
ORCHARDS, L.P., Seller

\_\_\_\_\_  
Address

\_\_\_\_\_  
By: PAUL R. KITZKE  
Title: President

\_\_\_\_\_  
Address

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
Address

\_\_\_\_\_  
PURCHASER

STATE OF WASHINGTON            )  
  ) ss. CORPORATION ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_ )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared PAUL R. KITZKE to me known to be the President of KITZKE INVESTMENT COMPANY, INC., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
Notary Public in and for the State  
of Washington, Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON  
County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ and \_\_\_\_\_, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON  
County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ and \_\_\_\_\_, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print Name) \_\_\_\_\_

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**



# BENTON-FRANKLIN TITLE COMPANY



3315 WEST CLEARWATER AVENUE, SUITE 100, KENNEWICK, WA 99336  
TELEPHONE (509) 783-0661, TITLE FAX (509) 783-7880, ESCROW FAX (509) 783-2256, WEB SITE WWW.BFTITLE.COM

Agent for  
**Commonwealth Land Title Insurance Company**

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE A

Order No.: 102110 CJ

Customer No.:

Re.: **SONSHINE ORCHARDS/  
UNDISCLOSED**

1. Effective Date: **December 28, 2010 at 8:00 A.M.**
2. Policy or policies to be issued:

A. ALTA Owners 2006 - Standard Proposed Insured: <b>UNDISCLOSED</b>	Amount \$ <b>TO COME</b>
B. None Proposed Insured:	Amount \$
C. None Proposed Insured:	Amount \$

#### PREMIUM INFORMATION:

A. General Schedule Rate	\$	to	Tax: \$	be	Total: \$ <b>determined</b>
B.	\$		Tax: \$		Total: \$
C.	\$		Tax: \$		Total: \$

3. The estate or interest in the land described herein and which is covered by this commitment is:

**FEE SIMPLE**

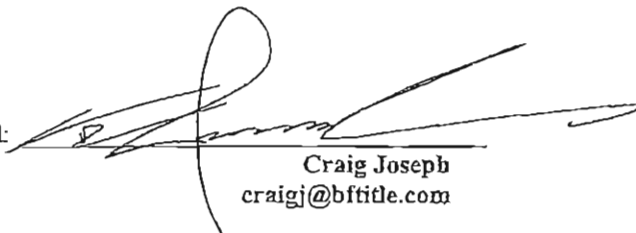
4. The estate or interest referred to herein is at Date of Commitment vested in:

**SONSHINE ORCHARDS, L.P., a Washington Limited Partnership**

5. The land referred to in this Commitment is situated in the County of **BENTON**, State of Washington and is more fully described as follows:

See Exhibit A attached hereto and made a part hereof.

Countersigned:



Craig Joseph  
craigj@bftitle.com

Exhibit A

Parcels A-D:

Lots 1, 2, 3 and 4, SHORT PLAT NO. 3259, according to the survey thereof recorded under Auditor's File No. 2010-013325, records of Benton County, Washington.

Parcel E:

That portion of the East half of the Northwest Quarter;  
That portion of the Northeast Quarter;  
That portion of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter;  
That portion of the Northwest Quarter of the Southeast Quarter;  
All in Section 29, Township 9 North, Range 27 East, W.M., Benton County, Washington, lying Southwesterly of Burlington Northern, Inc., Railroad right of way and lying Northerly of both Webber Canyon Road and Badger Road:

EXCEPT that portion thereof described as follows:

Beginning at the Northwest corner of the Northwest Quarter of the Southeast Quarter of said Section 29;

Thence East along the North line of said Northwest Quarter of the Southeast Quarter, 112 feet to the True Point of Beginning;

Thence South parallel with the West line of said subdivision, 199.3 feet, more or less, to the Northeasterly right of way line of County Road as said road existed on October 03, 1952;

Thence Northeasterly along said right of way line 77.14 feet;

Thence Northerly parallel with the West line of said subdivision to the North line of said subdivision;

Thence East along the North line to the Point of Beginning;

AND EXCEPT 80 foot right of way for Benton County road adjacent to said Burlington Northern, Inc. right of way;

AND EXCEPT any portion conveyed to Benton County for road purposes, pursuant to Deed recorded under Auditor's File No. 2008-007745, records of Benton County, Washington.

## SCHEDULE B

Order No.: 102110

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

### GENERAL EXCEPTIONS:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
- B. Any policy issued pursuant hereto will contain the Exclusions from Coverage and, under Schedule B, the standard exceptions as set forth and identified as to the type of policy on the attached Schedules of Exclusions and Exceptions.

### SPECIAL EXCEPTIONS:

1. **LIEN** of real estate excise sales tax upon any sale of said premises, if unpaid;  
Located in: Unincorporated Benton County  
Excise Tax Rate: 1.53%
2. **DELINQUENT GENERAL TAXES** for the year 2010, plus interest and penalties;  
Amount: \$8,807.10  
Tax Account No.: 1-2997-200-0001-002
3. Liability to future assessment by Kennewick Irrigation District.
4. **EASEMENT**, including the terms, covenants and provisions thereof;  
Recorded: September 10, 1941  
Recording No.: 172087  
In favor of: Pacific Telephone and Telegraph Company
5. **RIGHT OF WAY EASEMENT**, including the terms, covenants and provisions thereof, for electric transmission and/or distribution line, together with necessary appurtenances, as granted by instrument;  
Recorded: March 24, 1953  
Recording No.: 304848  
In favor of: Public Utility District No. 1 of Benton County, Washington, a municipal corporation
6. Terms and conditions of that certain contract relative to the operation of the Kennewick Irrigation district entered into between the United States of America and Kennewick Irrigation District, recorded June 17, 1954 in Volume 131, Page 480, under Auditor's File Number 324084, records of Benton County, Washington.

continued

**SCHEDULE B - Continued**

Order No.: 102110

7. **RIGHT OF WAY EASEMENT**, including the terms, covenants and provisions thereof, for electric transmission and/or distribution line, together with necessary appurtenances, as granted by instrument;
- Recorded: April 1958  
Recording No.: 390259  
In favor of: Public Utility District No. 1 of Benton County, Washington,  
a municipal corporation
8. **EXCEPTIONS AND RESERVATIONS** contained in Deed;
- From: Kennewick Irrigation District  
Recording No.: 475406

As follows:

The grantor reserves a right of way for canals, laterals, pipelines, drainage ditches and wasteways heretofore constructed or that may hereafter be constructed by the authority of the United States or by the authority of the grantor in connection with the Kennewick Irrigation Division; and also, rights of way for roads heretofore or that may hereafter be established to service district facilities.

The present ownership or encumbrances upon the estate or interest referred to in this exception are not included herein and no investigation has been made thereto.

9. **RIGHT OF WAY EASEMENT**, including the terms, covenants and provisions thereof, for electric transmission and/or distribution line, together with necessary appurtenances, as granted by instrument;
- Recorded: November 16, 1965  
Recording No.: 552515  
In favor of: Public Utility District No. 1 of Benton County, Washington,  
a municipal corporation
10. **RIGHT OF WAY EASEMENT**, including the terms, covenants and provisions thereof, for electric transmission and/or distribution line, together with necessary appurtenances, as granted by instrument;
- Recorded: May 02, 1979  
Recording No.: 790740  
In favor of: Public Utility District No. 1 of Benton County, Washington,  
a municipal corporation

Said easement is a re-record of instrument;

Recorded: March 14, 1979  
Recording No.: 786283

continued

SCHEDULE B - Continued

Order No.: 102110

11. RIGHT OF WAY EASEMENT, including the terms, covenants and provisions thereof, for electric transmission and/or distribution line, together with necessary appurtenances, as granted by instrument;

Recorded: May 02, 1797  
Recording No.: 790739  
In favor of: Public Utility District No. 1 of Benton County, Washington,  
a municipal corporation

Said easement is a re-record of instrument;

Recorded: March 14, 1979  
Recording No.: 786284

12. OIL AND GAS LEASE, including the terms, covenants and provisions thereof;

Lessor: Lester I. Barbee, also known as Lester Barbee and as Les Barbee, a married man dealing with his sole and separate property  
Lessee: Depcom, Inc., a Delaware corporation dba Depco Oil and Gas, Inc.  
Dated: February 27, 1981  
Recorded: February 23, 1982  
Recording No.: 856988

The present ownership or encumbrances upon the estate or interest referred to in this exception are not included herein and no investigation has been made thereto.

13. Any security in crops growing or to be grown on said premises and goods which are or may become fixtures located on said premises created or existing under provisions of Uniform Commercial Code R.C.W. 62-A.
14. TERMS, COVENANTS AND CONDITIONS contained in Application of Current Use Classification, entered into pursuant to RCW 84.34 (including potential liability for future applicable taxes, special benefit assessments levied by local governments, penalties and interest upon breach of, or withdrawal from, said classification).  
Classification: Farm and Agriculture Land

The County assessor must determine prior to a conveyance of the property if the land qualifies to continue in classification. Said determination may require a substantial period of time, which may delay the recording of the conveyance documents.

15. UNRECORDED LEASEHOLDS, rights of vendors and holders of security interests on personal property installed on the premises and rights of tenants to remove trade fixtures, if any such interest exists.
16. EASEMENT(S) delineated on the face of said Short Plat.
17. NOTES as contained on the face of said Short Plat.

continued

**SCHEDULE B - Continued**

Order No.: 102110

18. COVENANTS, CONDITIONS and RESTRICTIONS contained in instrument;

Recording No.: 2010-033359

19. MORTGAGE, to secure an indebtedness, including any interest, advances, or other obligations secured thereby;

Amount: \$77,575.88  
Dated: November 4, 2010  
Recorded: November 16, 2010  
Recording No.: 2010-033817  
Mortgagor: Sonshine Orchards L.P.  
Mortgagee: Kitzke Investment Company, Inc.

20. MORTGAGE, to secure an indebtedness, including any interest, advances, or other obligations secured thereby;

Amount: \$235,027.18  
Dated: November 4, 2010  
Recorded: November 16, 2010  
Recording No.: 2010-033818  
Mortgagor: Sonshine Orchards L.P.  
Mortgagee: Kitzke Investment Company, Inc.

21. TERMS AND CONDITIONS of the partnership/joint venture under which title is vested.

**END OF SCHEDULE B**

Please See Schedule C for Additional Notes and Requirements

## SCHEDULE C

Order No.: 102110

The following matters will not be listed as Special Exceptions in Schedule "B" of the Policy to be issued pursuant to this Commitment. Notwithstanding the absence of a Special Exception in Schedule "B" of the Policy to be issued, there will be no coverage for loss arising by reason of the matters listed below because these matters are either excepted from coverage under the General Exceptions section of Schedule "B", excluded from coverage under the Exclusions from Coverage or are not matters for which coverage is afforded under the insuring clauses of the Policy.

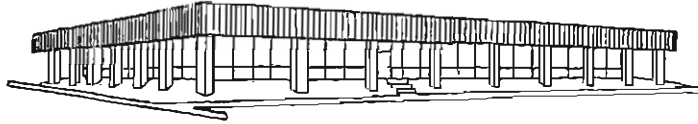
### NOTES AND REQUIREMENTS:

- A. Requirements: Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.
- B. Requirements: Payment of cancellation fee in accordance with our filed rate Schedule, to be imposed if this transaction is canceled for any reason.
- C. This Commitment shall not obligate the Company to issue any Endorsement. All Endorsements to be issued must be agreed to by the Company and appropriate for the estate insured.
- D. Any sketch or map enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the Company assumes no liability for any loss occurring by reason of reliance thereon.
- E. Unless otherwise requested, the forms of policy to be issued in connection with this commitment will be as referenced on Schedule A. The policy committed for or requested may be examined by inquiry at the office which issued the commitment. A specimen copy of the policy form(s) referred to in this commitment will be furnished promptly upon request.
- F. In the event that the Preliminary Commitment Jacket is not attached hereto, all of the terms, conditions and provisions contained in said Jacket are incorporated herein. The Commitment Jacket is available for inspection upon request.
- G. The specific rate classifications applied to the owner's policy, and/or lender's policy requested for this transaction, are disclosed in Schedule A of the preliminary commitment. Please inform your title officer if you think your transaction qualifies for a different classification. You may reach your title officer at [title@bftitle.com](mailto:title@bftitle.com) or 509-783-0661.
- H. The Policy(s) of insurance may contain a clause permitting arbitration of claims at the request of either the insured or the company. Upon request, the company will provide a copy of this clause and the accompanying arbitration rules prior to the closing of the transaction.
- I. Copies of the recorded instruments referenced in Schedule B under Special Exceptions, if not attached hereto, will be made available upon request.
- J. This commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.
- K. All liability and obligation under this commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that failure to issue the policy or policies is not the fault of the Company.

### ADDITIONAL NOTES AND REQUIREMENTS:

continued

# BENTON-FRANKLIN TITLE COMPANY



3815 WEST CLEARWATER AVENUE, SUITE 100, KENNEWICK, WA 99336  
TELEPHONE (509) 783-0661, TITLE FAX (509) 783-7880, ESCROW FAX (509) 783-2256, WEB SITE WWW.BFTITLE.COM

## ENDORSEMENT

Attached to Order No.: **102110 CJ**

Re.: **SONSHINE ORCHARDS/UNDISCLOSED**

This endorsement is made a part of said Commitment including any prior endorsements, and is subject to the schedules, terms, provisions and the conditions and stipulations therein, except as modified by the provisions hereof:

1. Schedule A of the above commitment is hereby amended in the following particulars:
  - a) The effective date of the Commitment including extension is:  
**No Change**
  - b) The title to the estate or interest in the land is at the extended effective date hereof vested in:  
**No Change**
  
2. Schedule B of the above commitment including any prior endorsement is hereby amended in the following particulars:
  - a) The Special Exceptions at the following numbered paragraphs of Schedule B are hereby deleted:  
**No Change**
  - b) The Special Exceptions at the following numbered paragraphs are hereby amended to Schedule B:
    20. **MORTGAGE**, to secure an indebtedness, including any interest, advances, or other obligations secured thereby;  
**Amount: \$235,027.18**  
**Dated: November 4, 2010**  
**Recorded: November 16, 2010**  
**Recording No.: 2010-033818**  
**Mortgagor: Sunshine Orchards L.P.**  
**Mortgagee: Paul Kitzke**
  
3. Schedule C of the above commitment including any prior endorsement is hereby amended in the following particulars:
  - a) The Notes and Requirements at the following numbered paragraphs of Schedule C are hereby deleted:  
**No Change**

continued

Countersigned:  1/11/2011

Craig Joseph  
craigj@bftitle.com

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

**Exhibit "S"**

- b) The Notes and Requirements at the following numbered paragraphs are hereby added to Schedule C:

**No Change**

tg



**Sonshine Orchards, Ltd**  
**REAL ESTATE SALE TERMS AND CONDITIONS**  
**Sale Date March 23, 2011**

1. **CONDITIONS OF SALE:** The terms and conditions for this sale are set forth in the Purchase and Sale Agreements which will be executed by successful bidders at the auction. Copies of the Purchase and Sale Agreements are available for inspection prior to this event by contacting Western Real Estate Auctions, LLC (referred to herein as WREA or Broker or Auctioneer). To the extent of any inconsistencies between these terms and conditions and the Purchase & Sale Agreement, the Purchase & Sale Agreement shall prevail.

2. **SALE PROCEDURE:** The property is owned by Sonshine Orchards, Ltd (Seller). For purposes of the auction, the property has been divided into five (5) different Tracts. These five tracts are comprised of four short plat lots and one larger tract. These Tracts will be offered individually, in combinations, or as an entirety as the bidders desire in such a style that all bids remain open until the auctioneer declares the bidding closed. The manner in which the bids total the greatest amount of money resulting in the highest price for the property, will be declared the winning bid(s). The selling price(s) shall be determined by competitive bidding. **A 10 % BUYER'S PREMIUM WILL BE ADDED TO THE HIGH BID(S) TO DETERMINE THE TOTAL SALES PRICE(S).** Should any dispute arise between bidders, the Auctioneer shall have the right to make the final decision to either determine the successful bidder or to re-sell the property that is in dispute. The sale will be recorded and if any dispute arises, the Auctioneer's sales records shall be conclusive in all respects.

3. **BIDDER REGISTRATION:** The auction is for Registered Bidders and their guests. **ALL BIDDERS, prior to receiving a bid number, must provide sufficient evidence to the Broker that they have adequate funds for the down payment (contract sale) or financing/cash (all cash sale) to close on the offered property.** Bidders must register their name, address, and telephone number with the registration clerk, providing photo I.D. (i.e. driver's license); and the Bidder Deposits as specified per Tract (see paragraph 4, "Bidder Deposit(s)"), in cash, cashier's check or PRE-APPROVED company or personal checks made payable to Fidelity Title Company. All checks not endorsed by successful Bidders will be returned to providers at the close of the oral auction. Bidder registration will begin at 12:30 p.m. on March 23, 2011 at the Red Lion Hotel located at North 1101 Columbia Center Blvd, Kennewick Washington. The Seller and/or Broker reserve the right to refuse admittance to or expel anyone from the sale premises for interference with the event activities, nuisance, canvassing or any other reasons.

4. **BIDDER DEPOSIT(S):** As required in paragraph 3 above, each Bidder must make a Bidder Deposit in order to be eligible to bid. The amount of the Bidder's Deposit required for each Tract is as follows:

Tracts	Bidder Deposits
1	\$5,000
2	\$5,000
3	\$5,000
4	\$5,000
5	\$20,000

5. **TERMS:** At the conclusion of the auction the high bidder for any given parcel will need to deposit with the Broker as an initial earnest money deposit, a sum equal to ten percent (10%) of the the Sale Price for the property (the Sale Price being defined as the successful bid plus the ten percent (10%) Buyer's premium). The bidder deposit paid pursuant to paragraph 4 will be credited against the purchaser's obligation under the Purchase & Sale Agreement. Broker will accept cash or pre-approved personal checks as payment of the earnest money deposit. Within forty-eight (48) hours of the conclusion of the auction (and prior to the purchaser taking possession of the property), purchaser shall be required to pay to the closing agent either (1) in the case of a contract sale, the balance of the down payment, or (2) for a cash at closing sale, an additional Fifteen Percent (15%) of the Sale

Price (total of 25% of the sale price) for Sale Tract 5 or any combination of Tracts wherein the Buyer will be taking over the farming operation. If sold separately, Tracts 1, 2, 3 and 4 shall be leased back to the seller for the crop year 2011 (see leaseback details in paragraph 23).

7. RIGHT TO ACCEPT OR REJECT: Seller reserves the right to accept or reject any and all offers for any reason, however, the sole purpose is to sell the properties. Please come prepared to purchase these Tracts.

8. PROPERTY INFORMATION: Property information packages are available in print or digital form, containing a copy each of the Purchase and Sale Agreements, Preliminary Title Reports, Plat Maps, Law of Real Estate Agency, and Auction brochure by contacting Western Real Estate Auctions at (509) 297-9294.

9. CONFIRMATION OF BID: Successful Bidder(s) must execute a "Confirmation of Bid" immediately upon award of the right to execute an offer to purchase as announced by the Auctioneer. Successful Bidder(s) must then complete the Purchase and Sale Agreement(s) on the day of the sale.

10. ENVIRONMENTAL DISCLAIMER: Seller and WREA make no warranties to or covenants with Buyer(s), with respect to the existence or nonexistence of any pollutants, contaminants, or hazardous waste prohibited by federal, state or local law or claims based thereon arising out of the actual or threatened discharge, release, disposal, seepage, migration or escape of such substances at, from or into the demised premises, whether known or unknown. Buyer is to rely upon its own environmental audit or examination of the premises.

12. CLOSING: Sales shall be closed by Benton Franklin Title Company located in Kennewick, Washington. These sale transactions must close no later than April 26, 2011 unless extended in writing by the Seller.

13. EARLY POSSESSION: Buyer of Tract 5, or any combination that includes Tract 5, shall be required to take possession of the Property being purchased within forty eight (48) hours after the auction. Prior to taking possession the Buyer shall be required to increase the earnest money deposit as noted in paragraph 5. As indicated in the purchase and sale agreement, Buyer shall be responsible for paying for all costs associated with the maintenance and operation of the property as well as all costs associated with the growing and harvesting of any crops growing thereon upon possession.

14. CLOSING COSTS AND PRORATIONS: Buyer shall pay all typical Buyer closing cost closing costs associated with the transaction (see earnest money agreement for details. Growing Costs in the amount of \$25,000 shall be added as added to the sale of Tract 5 as an additional closing cost

15. ADDITIONAL TERMS AND CONDITIONS: All dimensions and descriptions are approximations only based on the best information available and are subject to possible variation. Bidders should inspect the property and also review all of the pertinent documents and information available at Western Real Estate Auctions as each bidder is responsible for evaluating the property and shall not rely upon the Seller or WREA. The Seller or WREA or their agents assume no liability for errors or omissions. The properties herein are being sold subject to federal, state and county laws, ordinances and regulations which may affect the property and its use, including all conditions, restrictions and limitations and other matters of record. The property is being sold on an "AS IS, WHERE IS" basis and without any warranties or representations, expressed or implied, known or unknown. No claim will be considered for allowance, adjustment or rescission based upon failure of the property to correspond to any particular standard or exception. Broker, at his sole discretion, reserves the right to accept a personal check from a pre-qualified bidder in-lieu of a cashier's check. Seller and/or Broker have the right to postpone or cancel the sale, in whole or in part, to add or delete properties, at their sole discretion, and to modify or add any terms and conditions of sale and to announce such modifications or additional terms and conditions either prior to or at the auction. Announcements made at the auction will take precedence over printed matter.

16. AGENCY DISCLOSURE: Western Real Estate Auctions is representing the Seller and will be paid by the Seller. Each Purchaser will be required to acknowledge such agency.

17. FAILURE TO CLOSE: In the event that the successful Bidder(s) fails to close for any reason, the Earnest Money shall be non-refundable and Seller shall have default rights as set forth in the Purchase and Sale Agreements.

19. SELLER'S PERFORMANCE: The Seller has agreed to the terms of the sale as published, however, the Broker makes no warranties or guarantees as to the Seller's performance. All properties are being offered for sale to qualified purchasers without regard to the prospective purchaser's sex, race, color, religion or national origin.

20. PERSONAL PROPERTY: The sale of the properties includes the crops growing thereon (for which reimbursement of expenses must be paid to the Seller as provided in the Purchase & Sale Agreement) as well as any wind machines located on the properties together with such other personal property as Broker may indicate. The price allocation for any wind machine(s) located on the sale property shall be \$5,000 each, for which the Buyer will be required by the closing agent to pay sales tax on, but shall be included as a part of the Sale Price. The above ground diesel tank is not included in the sale and shall be removed by Seller prior to closing.

21. INDEMNITY AND RELEASE OF ALL CLAIMS: Buyer will release and fully indemnify Seller against any and all claims resulting out of the possession, occupancy, or control of the property after the Buyer takes possession of the property,

22. LOADING DOCK: Seller reserves the right to use the loading dock on Tract 5 for the crop year 2011.

22. SHOP: Seller shall vacate and remove personal property items by closing date but not during the early possession time.

23. LEASE BACK: Seller shall lease back Tracts 1-4 for the crop year 2011 unless said tracts are combined in a manner that a buyer has the ability and equipment to care for the property. Terms of the lease shall be: Buyer pays the property tax and irrigation water charges, Seller/lessee shall pay all other growing costs; Buyer/lessor shall receive 30% of the net proceeds of the crop and Seller/lessee shall receive 70% of the net proceeds of the 2011 crop (see full lease document for details).

24. TREE REMOVEAL: In the case of separate Buyers for any of the short plat lots, any tree that is on a property line will be removed by Seller after harvest is complete. If any two or more contiguous lots are purchased by one Buyer, no property line tree removal will be necessary.

25. IRRIGATION WATER DELIVERY: While there will be a an overall irrigation water use agreement, at time of sale there are not individual irrigation systems for each short plat lot. After harvest Seller shall do necessary work to create individual systems for each short plat lot. That entails individual delivery valves and physically changing some of the lateral delivery lines. Modifying the laterals will necessitate some excavation work where easements don't exist. Buyer agrees to allow this necessary work to be accomplished.

26. CROP INSURANCE: There is crop insurance in place on all of the property. If Buyer desires to keep it in place, Buyer will pay the applicable premiums for the 2011 crop year (see Section Five).



## WASHINGTON

# The Law of Real Estate Agency

*This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.*

The following is only a brief summary of the attached law.

Sec. 1. **Definitions.** Defines the specific terms used in the law.

Sec. 2. **Relationships between Licensees and the Public.** States that a licensee who works with a buyer or tenant represents that buyer or tenant – unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client - unless the parties agree in writing that both licensees are also dual agents.

Sec. 3. **Duties of a Licensee Generally.** Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Sec. 4. **Duties of a Seller's Agent.** Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. **Duties of a Buyer's Agent.** Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. **Duties of a Dual Agent.** Prescribes the additional duties of a licensee representing both parties in the same transaction and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. **Duration of Agency Relationship.** Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. **Compensation.** Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. **Vicarious Liability.** Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. **Imputed Knowledge and Notice.** Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. **Interpretation.** This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

Sec. 12. **Effective Date.** This law generally takes effect on January 1, 1997.

### **Sec. 1. Definitions**

As used in this act, unless the context clearly requires otherwise:

- (1) "Agency relationship" means the agency relationship created pursuant to this act or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.
- (2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.
- (3) "Business opportunity" means and includes a business, business opportunity and goodwill of an existing business, or any one or combination thereof.
- (4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.
- (5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.
- (6) "Confidential information" means information from or concerning a principal of a licensee that:
  - (a) was acquired by the licensee during the course of an agency relationship with the principal;
  - (b) the principal reasonably expects be kept confidential;
  - (c) the principal has not disclosed or authorized be disclosed to third parties;
  - (d) would, if disclosed, operate to the detriment of the principal; and
  - (e) the principal personally would not be obligated to disclose to the other party.
- (7) "Dual Agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.
- (8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter 18.85 RCW.
- (9) "Material fact" means information which substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence or use not adversely affecting the physical condition of or title to the property is not a material fact.
- (10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.
- (11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.
- (12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this act, a prospective transaction does not

exist until a written offer has been signed by at least one of the parties.

- (13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.
- (14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.
- (15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

### **Sec. 2. Relationships Between Licensees and the Public.**

- (1) A licensee who performs real estate brokerage services for a buyer shall be deemed a buyer's agent unless:
  - (a) The licensee has entered into a written agency agreement with the seller;
  - (b) The licensee has entered into a subagency agreement with the seller's agent;
  - (c) The licensee has entered into a written agency agreement with both parties;
  - (d) The licensee is the seller of one of the sellers; or
  - (e) The parties agree otherwise in writing after the licensee has complied with sections 3(l)(f).
- (2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under section 6 of this act. In such case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.
- (3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that same party in a different transaction involving that party, if the licensee complies with this act in establishing the relationships for each transaction.

### **Sec. 3. Duties of a Licensee Generally.**

- (1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:
  - (a) To exercise reasonable skill and care;
  - (b) To deal honestly and in good faith;
  - (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
  - (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
  - (e) To account in a timely manner for all money and property received from or on behalf of either party;

- (f) To provide a pamphlet on the law of real estate agency in the form prescribed in section 13 of this act to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights under section 2(1)(e), 4(1)(e), 5(1)(e), 6(2)(e), or 6(2)(f), whichever is soonest; and
  - (g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure".
- (2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.

#### **Sec. 4. Duties of a Seller's Agent.**

- (1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) of this subsection:
- (a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
  - (b) To timely disclose to the seller any conflict of interest;
  - (c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
  - (d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
  - (e) Unless otherwise agreed in writing after the seller's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent shall not be obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.
- (2) A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

#### **Sec. 5. Duties of a Buyer's Agent.**

- (1) Unless additional duties are agreed to in writing signed by a buyers agent, the duties of a buyer's agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
  - (b) To timely disclose to the buyer any conflicts of interest;
  - (c) To advise the buyer to seek expert advise on matters relating to the transaction that are beyond the agent's expertise;
  - (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
  - (e) Unless otherwise agreed in writing after the buyer's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a property for the buyer, except that a buyer's agent shall not be obligated to (i) seek additional properties to purchase while the buyer is a party to an existing contract to purchase, or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.
- (2) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

#### **Sec. 6. Duties of a Dual Agent.**

- (1) A licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with section 9(1)(f), which consent must include a statement of the terms of compensation.
- (2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:
- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
  - (b) To timely disclose to both parties any conflicts of interest;
  - (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
  - (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
  - (e) Unless otherwise agreed in writing after the dual agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent shall not be obliged to seek additional offers to purchase the p0roperty while the property is subject to an existing contract for sale; and
  - (f) Unless otherwise agreed in writing after the dual agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a property for the buyer, except that a dual agent shall not be obligated to
    - (i) seek additional properties to purchase while the buyer is a party to an existing contract to purchase, or
    - (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.
- (3) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

- (4) A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

#### **Sec. 7. Duration of Agency Relationship.**

- (1) The agency relationships set forth in this act shall commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and shall continue until the earlier of the following:
  - (a) completion of performance by the licensee;
  - (b) expiration of the term agreed upon by the parties; or
  - (c) termination of the relationship by mutual agreement of the parties.
- (2) Except as otherwise agreed in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:
  - (a) Accounting for all monies and property received during the relationship; and
  - (b) Not disclosing confidential information.

#### **Sec. 8. Compensation.**

- (1) In any real estate transaction, the brokers compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.
- (2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.
- (3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.
- (4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.
- (5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.
- (6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.
- (7) Nothing contained in this act shall obligate a buyer or seller to pay compensation to a licensee, unless the buyer or seller has entered into a written agreement with the licensee specifying the terms of such compensation.

#### **Sec. 9. Vicarious Liability.**

- (1) A principal is not liable for an act, error or omission by an agent or subagent of the principal arising out of an agency relationship
  - (a) unless the principal participated in or authorized the act, error or omission, or
  - (b) except to the extent that (i) the principal benefited from the act, error or omission and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.
- (2) A licensee is not liable for an act, error or omission of a subagent under this act, unless the licensee participated in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error or omission by an associate real estate broker or real estate salesperson licensed to such broker.

#### **Sec. 10. Imputed Knowledge and Notice.**

- (1) Unless otherwise agreed in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.
- (2) Unless otherwise agreed in writing, a licensee does not have knowledge or notice of any fact known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate sales person licensed to such broker.

#### **Sec. 11. Interpretation.**

This act supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this act. The common law shall continue to apply to the parties in all other respects. Nothing in this act affects the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This act shall be construed broadly.

#### **Sec. 12. Effective Date.**

This act shall take effect on January 1, 1997, except that this act shall not apply to an agency relationship entered into before January 1, 1997, unless the principal and agent agree in writing that this act will, as of January 1, 1997, apply to such agency relationship.