

AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board
Yakima County Commissioners' Office, Room 232**

Prepared by:
Joel Freudenthal

Department: Public Services

Requested Agenda Date: 01/19/2021

Presenting: Joel Freudenthal

Document Title:

Board of County Commissioners Record Assigned
BOCC Agreement

013-2021
Yakima County, WA

APPROVED FOR AGENDA:
 Consent Regular
Board of County Commissioners Determined

Amendment Two to Purchase and Sale Agreement (BOCC 158-2020)

Action Requested: *Check Applicable Box*

- PASS RESOLUTION EXECUTE or AMEND **AGREEMENT CONTRACT** or GRANT
- ISSUE PROCLAMATION PASS ORDINANCE OTHER _____

Describe Fiscal Impact:

Approximately \$437,000, depending upon closing date/cost.

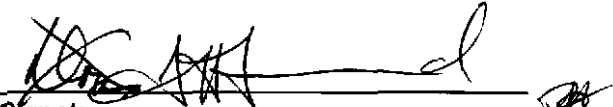
Background Information:


This action amends the Purchase and Sale Agreement to extend the contract date beyond 12/30/2020, and directs the Yakima County Public Services Department to set a closing date for this transaction, and authorizes the expenditure of funds consistent with Agreement to transfer ownership of the parcels to Yakima County. Ultimately these lands, along with other lands owned by the Flood Control Zone District and City of Yakima, will be come a new park.

Summary & Recommendation:

Approval.

Motion:

Department Head/ Elected Official

Signature

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial 

Late Agenda Requests Require BOCC Chairman Signature:

ADDENDUM TWO TO PURCHASE AND SALE AGREEMENT

SELLER: Squire-Ingham Co., Inc., a Washington corporation
BUYER: Yakima County, a Washington municipal corporation
PROPERTY: As set forth on Exhibit A of subject purchase and sale agreement

The following addendum two amends and modifies that certain amended purchase and sale agreement dated June 12, 2020, by and between the above-named parties. The purchase and sale agreement is modified as follows:

1. Defined terms used herein shall have the meaning set forth in the purchase and sale agreement, except as modified herein.
2. The last date specified for Closing as set forth in paragraph 5 of the purchase and sale agreement shall be changed from December 31, 2020, to June 1, 2021.
3. Except as modified herein, all terms and conditions of the purchase and sale agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have signed this agreement the day and year set forth below.

BUYER: BOARD OF YAKIMA COUNTY
COMMISSIONERS


BOCC Agreement

ADDENDUM TWO TO PURCHASE
AND SALE AGREEMENT - 1

013 - 2021

Yakima County, WA

Approved as to Form:


Don Anderson
Deputy Prosecuting Attorney

Ron Anderson, Chairman

Amanda McKinney, Commissioner

Attest:

Julie Lawrence, Clerk of the Board or
Linda Kay O'Hara, Deputy Clerk of the Board

LaDon Linde, Commissioner

*Constituting the Board of County
Commissioners for Yakima County,
Washington*

Dated: JAN 19 2021

SELLER:

SQUIRE-INGHAM CO., Inc.,
a Washington corporation

By: 

Its: President

Dated: 1/18/2021

BOCC Agreement

013-2021

Yakima County, WA

158 - 2020

PURCHASE AND SALE AGREEMENT Yakima County, WA

This PURCHASE AND SALE AGREEMENT ("Agreement") is made effective as of the 12 day of June, 2020, by and between **SQUIRE-INGHAM CO., Inc., a Washington corporation** ("Seller"), and **YAKIMA COUNTY**, a Washington municipal corporation ("Buyer").

RECITALS

This Agreement is made with reference to the following facts and objectives:

A. Seller is the owner of certain real property located in Yakima, Washington, legally described in **Exhibit A** attached hereto.

B. Seller is willing to sell the above-referenced real property to Buyer, together with all privileges, rights, easements, hereditaments, and appurtenances thereunto belonging, including all right, title and interest of Seller in and to any streets, alleys, ramps, passages, abutter's rights and other rights-of-way included therein or adjacent thereto; all water, mineral and other subsurface rights owned by Seller; and improvements including all buildings, and related facilities (the "Property"), and Buyer is willing to buy the Property from Seller under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which being hereby acknowledged, and in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

1. Definitions and Interpretation.

1.1 As used in this Agreement:

1.1.1 "Agreement" means this Purchase and Sale Agreement between Buyer and Seller.

1.1.2 "Brokers' Commission" has the meaning set forth in Section 10.

1.1.3 "Buyer" has the meaning set forth in the introductory paragraph above.

1.1.4 "Buyer's Title Notice" has the meaning set forth in Subsection 4.2.

1.1.5 "Buyer's Termination Event" has the meaning set forth in Subsection 6.3.1.

1.1.6 "Closing" means the consummation of the conveyance of the Property to Buyer and the payment of the Purchase Price to Seller as provided in this Agreement.

1.1.7 "Closing Date" has the meaning set forth in Section 5.

1.1.8 "Deed" has the meaning set forth in Subsection 5.1.1

1.1.9 "Deposit" has the meaning set forth in Subsection 3.2.1.

1.1.10 "Disapproved Items" has the meaning set forth in Subsection 4.2.

1.1.11 "Escrow Agent" has the meaning set forth in Subsection 3.2.1.

1.1.12 "Environmental Contamination" means the existence or release (including sudden or nonsudden, accidental or nonaccidental leaks, spills, disposal, deposit and migration) of, or exposure to, any Hazardous Substance in, into, onto or under the environment (including the air, soil, surface water and ground water).

1.1.13 "Evaluation Period" has the meaning set forth in Subsection 6.1.1.

1.1.14 "Execution Date" has the meaning set forth in Subsection 3.2.1.

1.1.15 "Good Funds" means a wire transfer of funds, an official check drawn or issued by a national banking association, other form of warrant or draft, or cash.

1.1.16 "Hazardous Substance" means all toxic or hazardous materials, chemicals, wastes, pollutants or similar substances, including Petroleum and Petroleum products, polychlorinated biphenyls, radioactive substances, asbestos insulation and/or urea formaldehyde insulation, and any other substance which has in the past or could in the future constitute a health, safety or environmental hazard to any person or property, including all substances which are regulated, governed, restricted or prohibited by any federal, state or local law, decision, statute, rule, regulation or ordinance currently in existence or hereafter enacted or rendered, including those materials or substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "pollutants" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, and any applicable statutes, ordinances or regulations under the laws of the state in which the Property is located, and any rules and regulations promulgated thereunder, all as presently or hereafter amended.

1.1.17 "Information" has the meaning set forth in Subsection 6.1.1(a)(iii).

1.1.18 "Initial Deposit" has the meaning set forth in Subsection 3.2.1.

1.1.19 "Notices" has the meaning set forth in Subsection 11.1.

1.1.20 "Petroleum" includes oil or petroleum of any kind and in any form including oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, diesel fuel and kerosene.

1.1.21 "Party" means either Seller or Buyer. "Parties" means Seller and Buyer.

1.1.22 "Purchase Price" has the meaning set forth in Subsection 3.1.

1.1.23 "Property" has the meaning set forth in Recital B above.

1.1.24 "Seller" has the meaning set forth in the introductory paragraph above.

1.1.25 "Seller's Monetary Liens" means any mortgages or deeds of trust or similar instruments recorded against the Property, mechanics liens recorded against the Property (except for such liens caused or permitted by Buyer) and liens for real property taxes and assessments which would be delinquent on the Closing Date.

1.1.26 "Title Company" has the meaning set forth in Subsection 4.1.

1.1.27 "Title Contingency Date" has the meaning set forth in Subsection 4.2.

1.1.28 "Title Report" has the meaning set forth in Subsection 4.2.

1.2 Generally, unless particular terms of this Agreement state otherwise, or unless the context indicates otherwise, words and phrases used in this Agreement will be interpreted and construed as follows:

1.2.1 Words in the present tense include the future and vice-versa. Words and phrases used as nouns include the singular and plural forms.

1.2.2 Words and phrases that are defined in this Agreement and references to particular sections and subsections of this Agreement will be capitalized.

1.2.3 "Shall," "will," and "must" signify mandatory obligations. "May" signifies a discretionary or permissive act.

1.2.4 The phrase "without limitation" will be deemed to follow the words "include," "includes," and "including" when referring to a list, class, or group of persons, entities, things, conditions, acts, omissions, events, rights, remedies, or liabilities.

1.2.5 The phrase "to the knowledge of" or any variation of that phrase will refer to matters within the actual knowledge of a Party after reasonable investigation.

1.2.6 The captions and headings of the articles, sections and subsections of this Agreement are for convenience and reference only, and shall not be deemed to define or limit the provisions thereof.

1.3 Exhibits attached to this Agreement, amendments made pursuant to Subsection 11.3 below, and documents incorporated by reference are integral parts of this Agreement and references to this Agreement will be deemed to include such documents.

2. **Sale of Property.** Seller agrees to sell, and Buyer agrees to purchase, pursuant to the provisions of this Agreement, all of Seller's right, title, and interest in and to the Property.

3. **Purchase Price.**

3.1 **Purchase Price.** The purchase price for the Property shall be Four Hundred Thirty Thousand and no/100ths Dollars (US\$430,000.00) (the "Purchase Price").

3.2 **Deposit.** Buyer shall make the following Deposit which shall be applicable to the Purchase Price:

3.2.1 **Initial Deposit.** Within thirty (30) business days after the day on which the latter of the two (2) Parties executes this Agreement (the "Execution Date"), Buyer shall

deposit into escrow with First American Title Company (the "Escrow Agent") the sum of Five Thousand Dollars (US\$5,000.00) (together with all interest earned thereon, the "Initial Deposit").

3.2.2 Investment of Deposit, Etc. The Initial Deposit and all interest earned thereon shall be collectively referred to in this Agreement as the "Deposit." The Deposit shall be held by the Escrow Agent in an FDIC-insured interest-bearing account at a bank, savings and loan association or other financial institution mutually acceptable to the Parties. Interest shall be retained in the account and will accrue for the benefit of and be credited to the Party entitled to receive (or have credited) the Deposit at Closing or upon termination of this Agreement pursuant to its terms.

3.3 Payment of Purchase Price. The Purchase Price shall be paid as follows:

3.3.1 Deposit The Deposit, plus interest thereon, shall be applied as a credit against the Purchase Price.

3.3.2 Additional Payment. On the Closing Date, Buyer shall deposit with the Escrow Agent in Good Funds the balance of the Purchase Price, and such other amounts as are set forth in the closing statement prepared by the Escrow Agent and reasonably approved by Buyer.

4. Title to the Property.

4.1 Quality of Title. Title to the Property shall be good and marketable and shall be free and clear of all liens, restrictions, easements, and other encumbrances and title objections, except for the exceptions to title as determined in accordance with Subsection 4.2. Title shall be insured by an ALTA Standard Coverage Owner's Policy of Title Insurance issued by First American Title Company (the "Title Company") in the full amount of the Purchase Price insuring fee simple title to the Property in Buyer, subject only to the exceptions determined in accordance with Subsection 4.2. Buyer shall have the right to require an Extended Coverage Owner's Policy of Title Insurance and endorsements to the Title Policy. If Buyer elects to require an Extended Coverage Owner's Policy of Title Insurance and/or endorsements to the Title Policy, Buyer shall pay for the increased amount of the premium attributable to the Extended Coverage Owner's Policy of Title Insurance and for the costs of the additional endorsements requested by it.

4.2 Title Report. Prior to or within fifteen (15) days after the Execution Date, Buyer shall obtain a commitment for title insurance issued by the Title Company (the "Title Report"), together with copies of the documents and instruments upon which the exceptions contained therein are based, copies of all covenants and restrictions, if any, which benefit the Property, and evidence that any such covenants and restrictions for the benefit of the Property which encumber property other than the Property are not subject to extinguishment (e.g., by the foreclosure of any superior lien on the property encumbered thereby) and a copy of the most recent tax bill with respect to ad valorem real property taxes and assessments levied or assessed with respect to the Property. Within thirty (30) days after receipt by Buyer of the Title Report and underlying documents and instruments (the "Title Contingency Date"), Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property disapproved by Buyer (the "Disapproved Items"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date shall be deemed to be Buyer's approval of all existing title matters except for Seller's Monetary Liens. If Buyer timely notifies Seller of Disapproved Items, and any of the Disapproved Items (except for Seller's Monetary Liens,

which liens shall be removed by Seller on or before the Closing Date) are not cured within forty-five (45) days after the Execution Date, Buyer may terminate this Agreement by giving Seller written notice of termination and, in that event: (a) Buyer and Seller shall execute and deliver to the Escrow Agent escrow cancellation instructions; (b) the Deposit (less one-half of the escrow cancellation fee) and all other amounts paid by Buyer to the Escrow Agent, together with all interest thereon, shall be returned to Buyer; and (c) except as otherwise provided herein, this Agreement shall be of no further force or effect. The procurement by Seller of a commitment for the issuance of the Title Policy, or an endorsement thereto, insuring Buyer against any Disapproved Items set forth in Buyer's Title Notice, shall be deemed the cure of such Disapproved Items.

4.3 Survey. Within sixty (60) days after the Execution Date, Buyer may prepare, at Buyer's cost and expense, a survey of the Property by a surveyor licensed in the state of Washington. The surveyor shall be selected by Buyer and shall be reasonably acceptable to Seller. Buyer may, at its election and at its cost and expense, obtain an ALTA survey of the Property.

5. Closing. The "Closing Date" shall be the date the Deed is recorded in the official property records of Yakima County, Washington, and shall occur on the fifteenth (15th) business day after the day on which each of the conditions precedent set forth in Subsection 6.1 have been either satisfied or waived by Buyer; PROVIDED, HOWEVER, that Closing shall not occur sooner than December 1, 2020, and PROVIDED, FURTHER, that if the Closing Date shall not have occurred on or before December 31, 2020, then, in that event, either Party may, within fifteen (15) days thereafter, terminate this Agreement, in which event: (a) Buyer and Seller shall execute and deliver to the Escrow Agent escrow cancellation instructions; (b) the Deposit (less one-half of the escrow cancellation fee), together with all other amounts paid by Buyer to Escrow Agent, and the interest thereon, shall be paid to the Party entitled to the same pursuant to Subsection 6.3; and (c) except as otherwise provided herein, this Agreement shall be of no further force or effect. The sale contemplated by this Agreement shall be consummated as follows:

5.1 Seller's Instruments. Seller shall cause to be deposited with the Escrow Agent, no later than five (5) days prior to the Closing Date, for recordation and delivery to Buyer upon the Closing, the following items:

5.1.1 Deed. A recordable warranty deed (the "Deed"), in a form reasonably acceptable to Buyer, duly executed and acknowledged by Seller and effective to convey to Buyer fee simple title to the Property as provided for in this Agreement free and clear of all exceptions, except those approved in accordance with Subsection 4.2.

5.1.2 Non-Foreign Status Certificate. A Non-Foreign Status Certificate pursuant to Internal Revenue Code § 1445 duly executed by Seller in a form reasonably acceptable to Buyer.

5.1.3 Real Estate Excise Tax Affidavit. A Real Estate Excise Tax Affidavit in a form reasonably acceptable to Buyer.

5.1.4 Additional Documents. Such additional documents as may be reasonably required by the Escrow Agent to consummate the Closing.

5.2 Buyer's Payment and Documents.

5.2.1 Payment. On or prior to the Closing Date Buyer shall deposit with the Escrow Agent, for payment to Seller upon the Closing, the balance of the Purchase Price and an amount equal to Buyer's costs as set forth in Subsections 5.4 and 5.5. The amount to be paid by Buyer at the Closing shall be set forth in the approved Buyer's closing statement prepared by the Escrow Agent.

5.2.2 Documents. Such documents as may be reasonably required by the Escrow Agent to consummate the Closing.

5.3 Seller's Costs. Seller shall before or simultaneously with the Closing pay the following costs: any fees and expenses of Seller's legal counsel and the Broker's Commission, as defined herein.

5.4 Buyer's Costs. Buyer shall, before or simultaneously with the Closing pay the following costs: the premium expense and title search charges associated with the issuance of the ALTA Standard Coverage Owner's Policy of Title Insurance issued by the Title Company as provided in Subsection 4.1, with a liability amount equal to the Purchase Price, the cost of any endorsements to the Title Policy requested by it, the additional premium attributable to an Extended Coverage Owner's Policy of Title Insurance, if requested by it, the Escrow Agent's fees, all costs of recording documents and instruments pertaining to financing, if any, obtained by Buyer, the costs of recording all documents and instruments to be recorded at the Closing, all sales and excise taxes applicable to the sale, and expenses of Buyer's counsel.

5.5 Prorations, Adjustments. All real property taxes, rentals, and utilities (if any) shall be prorated and adjusted between the Parties as of the Closing Date; PROVIDED, HOWEVER, that Seller shall be entitled to all year 2020 rental income pursuant to the terms of the existing orchard lease for the Property. To the extent that the tax statement covers land in addition to the Property, the overall tax amount will be allocated to land and improvements based on the land value and improvements value shown on the tax statement. The portion of the tax amount allocated to land value will then be allocated to the Property based on the area of the Property divided by the area of the entire property covered by the tax statement. Seller and Buyer hereby agree that any of the aforesaid prorations and adjustments which cannot be calculated accurately as of the Closing Date shall be prorated on the basis of the Parties' reasonable estimates, and shall be recomputed sixty (60) days after the Closing and either Party owing the other Party a sum of money based upon such subsequent proration adjustment shall promptly pay such sum to the other Party and, if payment is not made within ten (10) days after delivery of the bill therefor, shall pay interest thereon at the rate of eight percent (8%) per annum from the Closing Date to the date of payment. Buyer acknowledges that the tax value of the Property may be reassessed upon the change of ownership, and that a supplemental tax bill may be issued. If a supplemental tax bill is issued after the Closing Date, Buyer shall be solely responsible for any additional taxes due thereunder. The obligations of this Subsection shall survive the Closing.

5.6 Bonds, Taxes and Assessments. All bonds, special taxes, improvement taxes and/or assessments relating to the Property, if any, shall be paid by Seller at or prior to Closing.

5.7 Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date.

6. Conditions Precedent to Closing.

6.1 **Closing Conditions.** Notwithstanding anything in this Agreement to the contrary, Buyer's obligation to complete Closing under this Agreement is contingent upon the following conditions being satisfied within the time specified below:

6.1.1 **Evaluation Period.** At any time prior to the expiration of the first one hundred twenty (120) days after the Execution Date (the "Evaluation Period"), Buyer may, in its sole, absolute and unreviewable discretion, terminate this Agreement by giving written notice thereof to Seller, at which time Buyer shall be entitled to a refund of the Deposit, minus one-half (½) of the escrow cancellation fee. Buyer's obligation to purchase the Property on the Closing Date is subject to the satisfaction of the following contingencies and conditions during the Evaluation Period:

(a) Buyer shall have evaluated and approved, in Buyer's sole, absolute and unreviewable discretion, the suitability of the Property for its contemplated use and the availability of all necessary permits and governmental approvals for its contemplated use. In connection with this evaluation:

(i) Buyer and Buyer's agents, employees and independent contractors, may enter upon the Property at reasonable times for the purpose of inspecting and testing the same and Seller hereby grants Buyer the right to go upon the Property between the Execution Date and the Closing Date, at Buyer's expense, to make such surveys, tests and other site analyses as Buyer may require. Buyer shall indemnify Seller against all losses, damages, expenses, and claims that may arise by reason of Buyer's entry upon the Property pursuant to this Subsection and shall repair any damage to the Property caused by such entry.

(ii) Buyer may, in its discretion, retain one or more environmental consultants of its choosing to inspect the Property, including any soils, surface waters, wells, and groundwater on or under the Property and conduct such tests, samples, engineering studies, and examinations upon the Property as Buyer or any such consultants deem appropriate to determine the environmental condition of the Property and the existence or nonexistence of Environmental Contamination or environmental hazards on or about the Property including any past or current generation, storage, release, threatened release, disposal, and presence and location of asbestos, PCB transformers, Petroleum products, flammable explosives, underground storage tanks or other Hazardous Substances. Buyer shall indemnify Seller against all loss, damages, expenses and claims that may arise by reason of Buyer's inspection, testing and examination of the Property pursuant to this Subsection and shall repair any damages to the Property caused by such inspection, testing or examination. Within fifteen (15) business days after the Execution Date, Seller agrees to make available to Buyer any environmental studies or reports related to the Property in Seller's possession.

(iii) Within fifteen (15) business days after the Execution Date, Seller shall (at no cost to Buyer) deliver to Buyer copies of documents or matters which are either in its possession or under its control relating to: (a) land use, condemnation/ eminent domain actions, preapplications, minutes of governmental agencies and formal and informal land use applications concerning the Property; (b) Hazardous Substances on, in or under the Property, including environmental reports, tests and studies (draft and/or final) concerning the Property; (c) surveys, topographical reports and/or engineering reports concerning the Property; (d) soil and water tests or

reports concerning the Property; (e) the location and capacity of the utilities which service the Property; (f) wetlands reports; and (g) all other documents which would aid Buyer in its investigation and analysis of the Property, specifically including but not limited to records setting forth, describing, or relating to the use of water or water rights for irrigation or any other purpose at the Property (collectively, "Information"). Seller covenants and agrees that if, prior to the termination of this Agreement or the Closing Date, it receives any Information, it will immediately upon receipt provide Buyer with a copy of the same.

(b) Buyer shall have obtained, reviewed and approved the Title Report and all other title-related documents to be provided pursuant to Subsection 4.2.

(c) Buyer shall have obtained, reviewed and approved the survey, if one is requested, pursuant to Subsection 4.3.

(d) Buyer shall have obtained, reviewed and approved such appraisal of the Property as Buyer shall deem suitable or necessary.

6.1.2 Termination of Evaluation Period. In the event Buyer does not terminate, or is deemed not to have terminated, this Agreement at or prior to the end of the Evaluation Period, then, in that event, the Initial Deposit made by Buyer thereafter shall be non-refundable if there is no Closing (except as provided in Subsections 6.3.1 and 7.19), but the Initial Deposit shall be applicable to the Purchase Price if there is a Closing. As set forth in Subsection 3.2.2, the Initial Deposit made by Buyer shall be considered to be part of the Deposit for all purposes hereunder. As used in this Agreement, the term "Evaluation Period" shall mean the Initial Evaluation Period. In the event Buyer fails to timely extend the Evaluation Period, then, in that event, the Deposit shall be paid over to Seller, this Agreement shall terminate, except as otherwise expressly provided herein, and the Parties shall not have any further rights or obligations under this Agreement.

6.1.3 Additional Conditions Precedent. Buyer's obligation to purchase the Property on the Closing Date is also subject to the satisfaction or waiver by Buyer of the following additional conditions precedent which must be satisfied on or before the Closing Date:

(a) The representations and warranties of Seller set forth in Section 7 shall be true, correct and complete in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made as of the Closing Date.

(b) There shall be no effective injunction or restraining order of any nature issued by a court of competent jurisdiction which shall direct that this Agreement or the transaction contemplated herein not be consummated.

(c) Seller shall have fully complied with all of the covenants in this Agreement on its part to be performed on or prior to the Closing Date.

(d) The Property shall not contain Hazardous Substances or Environmental Contamination in excess of levels permitted by federal, state or local governmental statutes, standards, regulations, rules or ordinances.

7.3 Service Contracts. There are no written service contracts, art contracts, leasing listing agreements, landscaping contracts, equipment leases, maintenance agreements, open purchase orders and other contracts for the provision of labor, services, materials or supplies to or for the benefit of the Property which will affect or be obligations of Buyer or of the Property or any portion thereof following Closing.

7.4 Agreements Affecting the Property. To the knowledge of Seller, at Closing, there will be no unrecorded leases, easements, encumbrances, or other agreements affecting the Property except as shown on the Title Report, or as otherwise disclosed to Buyer by Seller in writing and approved by Buyer.

7.5 Information. The Information delivered to Buyer pursuant to this Agreement or in connection with the execution hereof are, and at Closing will be:

- a) true and correct copies; and/or
- b) in full force and effect.

7.6 No Notices of Violations. Seller has received no notice of any failure of Seller to comply with any applicable governmental requirements in respect of the development, use and occupation of the Property, including environmental, zoning, platting and other land use requirements which have not been heretofore corrected to the satisfaction of the appropriate governmental authority.

7.7 Compliance with Law. To the knowledge of Seller, the Property and the existing uses of the Property, are in material compliance with all applicable laws, ordinances, rules, regulations, and requirements of all governmental authorities having jurisdiction thereof, including those pertaining to zoning, building, housing, water, use, safety, fire, health and the environment.

7.8 No Litigation or Proceedings. To the knowledge of Seller, there are no actions, suits, proceedings or investigations pending or threatened, before any agency, court, or other governmental authority which relates to the ownership, maintenance, development or operation of the Property or which could become a liability of Buyer or the Property or any portion thereof following Closing.

7.9 Condemnation.

7.9.1 Eminent Domain Proceedings. To the knowledge of Seller, there is no condemnation or eminent domain proceeding affecting the Property or any portion thereof currently pending or threatened except as the same may have been disclosed to Buyer.

7.9.2 Takings by Eminent Domain. To the knowledge of Seller, there have been no takings by condemnation or eminent domain of any land of which the Property was a part and for which compensation has not been paid or for which compensation has been paid within the past three (3) years except as the same may have been disclosed to Buyer.

7.10 Artifacts and Endangered Species. To the best of Seller's knowledge, there are no historical artifacts, Indian artifacts or burial grounds located on or under the Property and there are no endangered species, as determined under federal, state or local laws, located on or under the Property.

7.11 No Defaults. Seller has not received notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way, or easements which may affect Seller in respect to the Property or may affect the Property or any portion thereof and, to the knowledge of Seller, no condition exists that with the passage of time or giving notice or both would constitute such a default.

7.12 Seller Not a Foreign Person. Seller is not a foreign person as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended. Seller will deliver to Buyer at Closing a Certificate of Nonforeign Status, in a form reasonably acceptable to Buyer certifying the correctness of this Subsection.

7.13 No Attachments. There are no attachments, executions, assignments for the benefit of creditors, or proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the knowledge of Seller, threatened by or against Seller.

7.14 No Mechanics' Liens. To the knowledge of Seller, there are no pending or threatened mechanics' or materialmen's liens recorded against the Property.

7.15 Special Assessments. To the knowledge of Seller, no special or general assessments have been levied on the Property.

7.16 Environmental Conditions. To the knowledge of Seller: (a) no Hazardous Substances are, will be, or have been, stored, treated, disposed of or incorporated into, on or around the Property in violation of any applicable statutes, ordinances or regulations; (b) the Property is in material compliance with all applicable environmental, health and safety requirements; and (c) any business heretofore operated on the Property has disposed of its waste in accordance with all applicable statutes, ordinances and regulations. Seller has no actual notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of environmental, health or safety statutes, ordinances or regulations.

7.17 Representations To Be Correct at Closing. All of the representations and warranties of Seller contained in this Agreement shall be true and correct as of the Execution Date and as of the Closing and shall survive the Closing.

7.18 No Untrue Statements. None of the foregoing representations and warranties contain any untrue statement or material fact or fails to state any material fact necessary to make such representations and warranties not misleading.

7.19 Corrective Notices; Liability. If after the Execution Date, but prior to the Closing Date, Seller becomes aware that any of Seller's representations set forth herein are no longer true and correct, then Seller shall provide Buyer with written notice stating that Seller believes that such representations are no longer accurate and the general nature of the change. Within ten (10) business days after receipt of such notice, Buyer shall either: (a) terminate this Agreement and the Deposit shall be returned to Buyer (in which event Buyer shall retain its right to recover its actual damages, limited to actual out-of-pocket expenses, incurred by Buyer and determined according to proof, if any, resulting from such inaccuracy); or (b) waive its rights on such account and elect to consummate the transaction herein contemplated, in which event Buyer shall be deemed to have waived all rights and remedies with respect to those matters specifically set forth in such notice. Notwithstanding the foregoing, nothing in this Agreement shall limit Buyer's rights and remedies if such representation or warranty was intentionally or willfully misrepresented by Seller to Buyer as of the Execution Date or if

Buyer discovers an incorrect material representation or warranty following the Closing Date which Seller had knowledge of before Closing and failed to disclose to Buyer.

8. Buyer's Warranties and Representations.

Buyer represents and warrants to Seller as follows:

8.1 Authority. Subject to obtaining approval of this Agreement by its Board of County Commissioners, if deemed necessary, Buyer is fully authorized to enter into and perform its obligations under this Agreement and any other agreement or instrument necessary to consummate the transaction contemplated by this Agreement.

8.2 No Defaults. Neither Buyer's execution of this Agreement nor Buyer's performance of its obligations hereunder will violate, or constitute a default under or breach of, any agreement between Buyer and any third party or by which Buyer is bound.

8.3 No Proceedings. There is neither pending nor, to the knowledge of Buyer, any threatened legal action, arbitration or administrative hearing before any governmental authority to which Buyer is a party and which could enjoin or restrict Buyer's right or ability to perform its obligations under this Agreement.

8.4 No Attachments. There are no attachments, executions, assignments for the benefit of creditors, or proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the knowledge of Buyer, threatened by or against Buyer.

8.5 No Untrue Statements. None of the foregoing representations and warranties contain any untrue statement or material fact or fails to state any material fact necessary to make such representations and warranties not misleading.

8.6 Representations. All representations and warranties contained in this Section shall be deemed made as of the Execution Date, shall be renewed as of the Closing and shall survive the Closing.

9. Survival of Warranties and Representations.

Notwithstanding anything to the contrary in this Agreement, all covenants contained in this Agreement which by their nature impliedly or expressly involve performance after Closing and all representations and warranties contained in this Agreement shall survive Closing for a period of two (2) years after the Closing Date. Any inspection of the Property, or of Seller's records, by Buyer or its representatives shall not be construed as a waiver of any warranty contained in this Agreement.

10. Brokers. Seller agrees to pay all brokerage fees in connection with this transaction. Seller and Buyer each hereby agree to indemnify and hold the other harmless from all loss, costs, damage or expenses (including reasonable attorneys' fees) incurred by the other as a result of any claim arising out of the acts of the indemnifying Party (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker, finder, or party who claims to have dealt with such Party.

11.5 Merger of Prior Agreements. This Agreement and the exhibits hereto constitutes the entire agreement between the Parties with respect to the purchase and sale of the Property and supersedes all prior and contemporaneous agreements and understandings between the Parties hereto relating to the subject matter hereof. Each Party acknowledges and agrees that except for the specific representations, warranties and covenants contained in this Agreement, the other Party and its agents have not made any representations, warranties or covenants to it.

11.6 Time is of the Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

11.7 No Joint Venture or Third Party Beneficiary. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.8 Further Acts. Each Party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

11.9 Professional Fees and Costs. If any legal or equitable action, appeal, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, then the successful or prevailing Party or Parties in such undertaking (or the Party that would prevail if an action were brought) shall be entitled to recover reasonable attorney and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding or discussions, in addition to any other relief to which such Party may be entitled. The Parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such Party reasonably incurs expenses. The provisions of this Section shall survive the Closing or the termination of this Agreement.

11.10 Dates of Performance. In the event that any date for performance by either Party of any obligation hereunder required to be performed by such Party falls on a Saturday, Sunday or nationally recognized holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

11.11 Counterparts and Execution by Electronic Means. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by email, facsimile, telecopy, telex or other means of electronic communication producing a printed copy will be deemed to be an execution and delivery of this Agreement on the date of such communication by the Party so delivering such a copy. The Party so delivering such a copy via electronic communication shall deliver an executed original of this Agreement to the other Party within five (5) business days of the date of delivery of the electronic communication.

11.12 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise make ineffective any other provision of this Agreement.

11.13 Eminent Domain. If prior to the date of the Closing, Seller acquires knowledge of any pending or threatened action, suit or proceeding to condemn or take all or any part of the Property under the power of eminent domain, then Seller shall immediately give notice thereof to Buyer. Upon receipt of such notice, Buyer may terminate this Agreement and this Agreement shall be null and void, whereupon the full amount of the Deposit, minus one-half (1/2) the escrow cancellation fee, shall be paid by Escrow Agent to Buyer, and all Parties shall thereupon be relieved of all further liability hereunder. If Buyer does not terminate this Agreement, and the Closing occurs, then Buyer shall be entitled to the proceeds of any condemnation award available.

11.13.1 Casualty. If, prior to the date of the Closing the Property, or any portion thereof, shall be damaged or destroyed by reason of an earthquake or other casualty, then Seller shall immediately give notice thereof to Buyer. Upon receipt of such notice, Buyer may terminate this Agreement and this Agreement shall be null and void, whereupon the full amount of the Deposit, minus one-half (1/2) the escrow cancellation fee, shall be paid by the Escrow Agent to Buyer, and all Parties shall thereupon be relieved of all further liability hereunder. If Buyer does not terminate this Agreement, and the Closing occurs, then Buyer shall be entitled to the insurance proceeds available as a result of the casualty, if any.

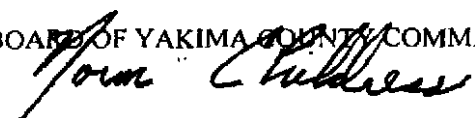
11.14 Legal and Tax Implications; Role of Menke Jackson Beyer Law Firm. This Agreement affects legal rights and obligations and will have tax implications. If any Party has any questions regarding this agreement and any addenda, attachments or other related documents, such Party should consult an attorney or tax advisor. The law firm of Menke Jackson Beyer, LLP, has been hired by Buyer to document the business transactions described herein. In doing so, said firm has not attempted to independently represent each of the Parties hereto but has solely represented the interests of Buyer. Seller's authorized representative, by the signature appearing below, agrees and affirms that he understands that he has not been represented by said firm, and that he has had an adequate opportunity to secure independent legal counsel of his own choosing to review this Agreement and the documents attached hereto.

BOCC Agreement
IN WITNESS WHEREOF, the Parties have signed this Agreement the day and year set forth below.


158 - 2020

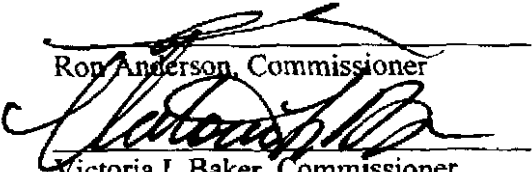
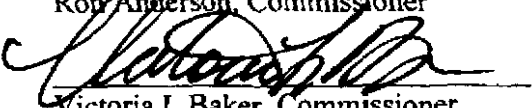
BUYER: Yakima County, WA

BOARD OF YAKIMA COUNTY COMMISSIONERS


Norm Childress, Chairman

Approved as to Form:


Don Anderson
Deputy Prosecuting Attorney


Ron Anderson, Commissioner

Victoria L Baker, Commissioner
Constituting the Board of County Commissioners
for Yakima County, Washington

Attest:

Linda Kay O'Hara, Clerk of the Board



Dated: JUL 21 2020

SELLER:

SQUIRE-INGHAM CO., Inc.,
a Washington corporation

By:  President

Its: PRESIDENT

Dated: 6/12/2020

Exhibit A

Legal Description

PARCEL A

That portion of the East half of the Southeast quarter of Section 9, Township 13 North, Range, 18, E.W.M., lying Northeasterly of the right-of-way of State Highway (SR 12). EXCEPT that portion lying Westerly of a line described as: Beginning at a point on the North line of the Southeast quarter of said Section 9, situate 1,388.87 feet North 89°33'07" East of the Northwest corner thereof; thence South 1°46' East to the North line of said State Highway and the terminus of the line herein described; EXCEPT the East 656 feet thereof. Situate in Yakima County, Washington.

Assessor's parcel no. 181309-41008

PARCEL B

That portion of the East 656 feet of the Southeast quarter of Section 9, Township 13 North, Range 18, E.W.M., lying Northerly of the Northern Pacific (Burlington Northern) Railroad right-of-way; EXCEPT any portion that may lie within the Naches River. Situate in Yakima County, Washington.

Assessor's parcel no. 181309-41009

PARCEL C

All that portion of the West half of the West half of the Southwest quarter of Section 10, Township 13 North, Range 18, E.W.M., lying Northerly of the North right-of-way line of Northern Pacific Railway Company; EXCEPT beginning 2,222.6 feet North of the Southwest corner of said Section 10 and 242.6 feet East of the West line of said Section 10, running thence East 417.4 feet, more or less, to the East line of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 10, thence North along said East line 417.4 feet, more or less, to the Northeast corner of said Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 10; thence West along the North line of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 10 to a point 242.6 feet East of the West line of said Section 10; thence South 417.4 feet, more or less, to the point of beginning.

Assessor's parcel no. 181310-32002

PARCEL D

A tract of land lying in the Southwest quarter of Section 10, Township 13 North, Range 18, E.W.M., described as follows: Beginning at the intersection of the Northerly right-of-way line of the Naches Branch of the Northern Pacific Railway with the West line of the East half of the West half of the Southwest quarter of said Section 10, approximately 1,209 feet North of the southwest corner of said subdivision; thence North along the said subdivision line 645 feet, more or less, to the Southerly right-of-way line of Pacific Power & Light Company's Power canal extended; thence following this Southerly right-of-way line approximately the following courses and distances South 4° East 1,180 feet; thence South 30° East 580 feet, more or less, to the intersection of the Westerly right-of-way line of said power canal, with the Northerly right-of-way line of the Naches Branch of the Northern Pacific Railway; thence North 61°30' West along this right-of-way line 1,353 feet, more or less, to the beginning. Situate in Yakima County, Washington.

Assessor's parcel no. 181310-32004

PURCHASE AND SALE AGREEMENT - 17

Raf



Heritage-Moultray Real Estate Services
 5625 Summitview Ave
 Yakima, WA 98908
 Phone: 509-248-9400
 Fax: 509-965-9282

© Commercial Brokers
 Association
 ALL RIGHTS RESERVED



Form PSA
 Addendum/Amendment to PSA
 Rev 1/2011
 Page 1 of 1

**ADDENDUM/AMENDMENT TO
 PURCHASE AND SALE AGREEMENT**
 CBA Text Disclaimer: Text deleted by licensee indicated by strike
 New text inserted by licensee indicated by small capital letters

The following is part of the Purchase and Sale Agreement dated June 12, 20 20 (the "Agreement") between Yakima County, a Washington municipal corporation ("Buyer") and Squire-Ingham Co., a Washington corporation ("Seller") regarding the sale of the property known as SEE EXHIBIT A Yakima WA 98902 (the "Property").

IT IS AGREED BETWEEN THE BUYER AND SELLER AS FOLLOWS.

1. The wind machines shall stay with the property.
2. Buyer and Seller agree that the property will remain in open space and any excise tax that may be imposed over and above the normal open space taxation shall be paid by the purchaser.
3. All proceeds for the 2020 crop season shall be paid to the seller.

ALL OTHER TERMS AND CONDITIONS of the Agreement remain unchanged

INITIALS: Buyer _____ Date _____ Seller X [Signature] Date 6/12/2020
 Buyer _____ Date _____ Seller _____ Date _____

Land Lease Agreement

This lease agreement entered into this 1st day of February (month), 2020 (year), between the following parties:

Lessee(s):_Fuller Orchards

Address: _PO BOX 130, Tieton WA 98947

Telephone: 509 930 3926

Lessor(s): Squire Ingham Co

Address: 5231 West Powerhouse Rd, Yakima WA 98908

Telephone: Home - 509 966 4619, Cell 509 961 6456

This Lease Agreement ("Lease") is made between Fuller Orchards, a Washington Sole Proprietor Company ("Lessee"), and Squire Ingham Co, ("Lessor"), a Washington corporation of Yakima, WA. The parties agree to the following:

1. **LAND.** Lessor agrees to lease, approximately 31 acres of land located at (address) 5201 Clover Lane Rd, Yakima WA, 98908 and its parcel numbers 181309-41008, 181309-41009 and 181310-32002 and 181310-32004.. (See attached map)
2. **PERMITTED USE.** The land will be used for growing and harvesting, crops of tree fruit; apples, pears and cherries. Any other use must have prior approval of Lessor.
3. **CHEMICAL USAGE.** Lessee agrees not to use any long term residual action herbicides on any of the land under this lease. Lessee agrees to follow all federal, state and local regulations in regards to purchase, application and record keeping of chemicals.
4. **TERMS.** This lease will begin on February 1, 2020 or upon the signing of the lease by both Lessor and Lessee. This lease will end on December 31, 2020. Lessor reserves right to terminate the lease for any reason prior to this date but no sooner than the end of Lessee's harvesting of the crop and delivery to the packing shed. It is understood that the cost of establishing a crop of tree fruit is the sole responsibility of the lessee.
5. **RENT.** Lessee will pay to Lessor 20% of revenues per year. Lessee will pay full sum after all returns have been received for said growing season stated above. Any accrued growing expenses prior to this agreement for the 2019 growing season will be reimbursed to the lessor from the lessee within a reasonable time frame agreed on by both parties. Any other payment plan made between the Lessee and the Lessor must be agreed upon in writing prior to payment. Lessor is allowed to view any and all documents and communications of crop returns prior to receipt by the lessor. Lessee is required to give any and all above stated crop return information as requested in a timely manner.
6. **WATER and TAX LIABILITY.** Lessor and lessee each shall pay 50% of NCCC of water shares for all water share costs during lease of said acres. Lessor shall pay 1st half of assessment of \$1,295.44 by March 15th 2019 and lessee 2nd half of assessment of \$1,295.43 by

Oct. 31 2019. Lessor will also be liable for any and all federal, state and local taxes associated with the property.

- 7. MAINTENANCE and IMPROVEMENTS.** Lessee will be responsible for all general growing maintenance throughout the lease including but not limited to; irrigation, mowing, weed control, pruning, thinning, spraying and harvesting of the trees. Any and all major improvement projects by the lessee will need prior approval from the lessor. Major improvement projects include but are not limited to; heavy tree pruning, tree removal and road way maintenance.
- 8. OPERATOR EXPENSES.** All materials and services related to the growing, harvest, or transportation of the fruit shall be supplied by the Lessee. Agricultural products include, but are not limited to, fertilizer, pesticides, herbicides, fuel, lime, equipment, tools and soil tests.
- 9. INSURANCE.** Lessee must maintain worker's compensation insurance coverage for the farming operations and any and all employees engaged in operations on the leased land during the period of this Agreement. The lessee agrees to maintain liability insurance coverage for the farming operations under this Agreement in the amount of no less than \$750,000.00.
- 10. EQUIPMENT LEASE AGREEMENT.** The lessor shall provide to lessee availability of road vehicles, tractors , off road equipment and miscellaneous shop and hand tools necessary for farm related operations. Lessee will be responsible for any and all damages parts and labor during operation including: checking and maintaining all fluid levels, change filters and fluids at appropriate service hours, repair, service, and cleaning of equipment as needed. Lessee shall provide appropriate insurance coverage (including theft and vandalism) regarding all equipment utilized. A listing of equipment shall be provided to lessee and insurance carrier. Lease cost for the sum of \$5,000.00. Lessee will pay full sum on December 31, 2019.
- 11. RIGHT OF ENTRY AND INSPECTION.** The Owners' may enter the Real Estate at any reasonable time for the purpose of consulting with the Lessee, viewing the property, making repairs or improvements, or for other reasonable purposes that do not interfere with the Lessee's ability to carry out regular farming operations.
- 12. TRANSFER OF INTEREST.** The Lessee agrees not to lease or sublet any part of the Real Estate nor assign this Agreement to any other person, nor sublease any or all of the property described herein without prior written permission of the Lessor. This Agreement shall be binding upon the heirs, assignees, or successors in interest of the Lessee. If the Owners should sell or otherwise transfer title to the Real Estate, the Owners will do so subject to the provisions of this Agreement.
- 13. NO PARTNERSHIP CREATED.** This lease agreement shall not be deemed to give rise to a partnership relation, and neither party shall have authority to obligate the other without written consent.
- 14. INDEMNIFICATION.** Lessee will be responsible for all personal property, equipment or fixtures placed in or on the property by Lessee or its agents, employees, or invitees, and such personal property will remain the property of Lessee and may be removed by Lessee without penalty. Lessee will defend and indemnify Lessor against all claims, suits, or losses caused by or related to such personal property. The Lessee will not be liable for any fees or costs associated with the land or trees that may be damaged or destroyed by natural disasters or acts of god including but not limited to floods, fires, deep freezes or snow and ice.
- 15. WASHINGTON LAW AND VENUE.** If a dispute arises between the parties, Washington law will govern. Venue for any lawsuit will be in Yakima County, Washington.

16. This document is a continuation of the agreement of 2019 filed with Yakima County Auditor (file no. 8010661) on March 28, 2019

17. SIGNATURES

Dan Fuller	<u>Daniel G. Fuller</u>	<u>[Signature]</u>	<u>6/1/20</u>
Lessee Name		Lessee Signature	Date
Robert Ingham, President	<u>[Signature]</u>	<u>[Signature]</u>	<u>6/1/2020</u>
Lessor Name		Lessor Signature	Date