

Port of Kennewick provides telephonic, video access, and in-person participation options to the public.

To participate by telephone, please call in at: 1-877-309-2073, Access Code: 455-974-693  
Or, join on-line at the following link: <https://meet.goto.com/455974693>

## AGENDA

**Port of Kennewick**  
**Regular Commission Business Meeting**  
Port of Kennewick Commission Chambers and via GoToMeeting  
350 Clover Island Drive, Suite 200, Kennewick Washington

May 28, 2024  
2:00 p.m.

- I. **CALL TO ORDER**
- II. **ANNOUNCEMENTS AND ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. **CONSENT AGENDA**
  - A. Approval of Direct Deposit and ePayments May 15, 2023
  - B. Approval of Warrant Register Dated May 28, 2024
  - C. Approval of Regular Commission Meeting Minutes May 14, 2024
- VI. **PRESENTATION**
  - A. Vista Field Lot #15 Purchase and Sale Agreement with Kuki, LCC; Resolution 2024-09 (**AMBER**)
- VII. **REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Kennewick Waterfront
    - 1. Cedar's Dock Report (**MICHAEL**)
  - B. Vista Field Southern Gateway Project Update (**TANA**)
  - C. HRA VEBA Board Nomination (**TIM/NICK**)
  - D. RCO Grant Update (**TANA/MICHAEL**)
  - E. Commission Meetings (formal and informal meetings with groups or individuals)
  - F. Non-Scheduled Items  
(**LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/MICHAEL/CAROLYN/TIM/KEN/TOM/SKIP**)
- VIII. **PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IX. **ADJOURNMENT**

**PLEASE MUTE YOUR MICROPHONE UNLESS YOU ARE SPEAKING  
AND SILENCE ALL NOISE MAKING DEVICES**



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**MAY 14, 2024 MINUTES**

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m.

## **ANNOUNCEMENTS AND ROLL CALL**

**The following were present:**

**Board Members:** Skip Novakovich, President  
Kenneth Hohenberg, Vice President  
Thomas Moak, Secretary

**Staff Members:** Tim Arntzen, Chief Executive Officer  
Tana Bader Inglima, Deputy Chief Executive (via telephone)  
Nick Kooiker, Deputy Chief Executive Officer/CFO (via telephone)  
Larry Peterson, Director of Planning and Building (via telephone)  
Amber Hanchette, Director of Real Estate (via telephone)  
Michael Boehnke, Director of Operations (via telephone)  
Bridgette Scott, Executive Assistant (via telephone)  
Lisa Schumacher, Special Projects Coordinator (via telephone)  
Carolyn Lake, Port Counsel (via telephone)  
Jennifer Roach, Accounting Assistant, (via telephone)

## **PLEDGE OF ALLEGIANCE**

Commissioner Hohenberg led the Pledge of Allegiance.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

- A. Approval of Direct Deposit and E-Payments Dated May 1, 2024**  
Direct Deposit and E-Payments totaling \$111,647.23
- B. Approval of Warrant Register Dated May 14, 2024**  
Expense Fund Voucher Number 105848 through 105894 for a grand total of \$205,249.20
- C. Approval of Regular Commission Meeting Minutes April 23, 2024**

**MOTION:** *Commissioner Hohenberg moved to approve the Consent Agenda presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 14, 2024 MINUTES

**DRAFT**

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## PRESENTATIONS

### **A. 2023-2024 Budget Update**

Mr. Kooiker presented a 2023-2024 Budget update and stated this is a high-level overview (*Exhibit A*). Additionally, staff have started to work on the draft 2025-2026 Budget. Mr. Kooiker requested Commission consensus to move \$500,000 from the Vista Field satellite maintenance shop and allocate the funds to the following line items:

- Deschutes traffic mitigation: \$300,000;
- Daybreak Commons A&E design: \$200,000.

Commission and staff discussed the budget fund reallocation.

*It is the consensus of the Commission to reallocate \$500,000 from the Vista Field satellite maintenance shop to the City of Kennewick Deschutes traffic mitigation and Daybreak Commons A&E design.*

Mr. Arntzen stated staff will present concepts for the 2025-2026 Budget, which include the Commission's ideas over the past two years and the Budget will reflect the Commission's priority projects in Vista Field. Mr. Arntzen stated with the Port's limited financial and staff resources, some projects may be put on hold until funding is available.

### **B. WPPA Visit to Port of Kennewick**

Ms. Bader Inglima stated the Port hosted Washington Public Ports Association's (WPPA) executive director Eric ffitch and deputy director Chris Herman last week and toured Port properties (*Exhibit B*). Ms. Bader Inglima read from the WPPA's social media post:

*"This week, WPPA was treated to a comprehensive look at the good work underway at the Port of Kennewick, where we spent the morning with their senior leadership and took a swing through their development projects at Vista Field and Columbia Gardens. Vista Field is bursting with potential, and we saw work underway converting two legacy airplane hangars into public spaces for community gathering. Those will anchor upcoming mixed-use development, with residents living above retail spaces where the port is prioritizing local businesses. The focus on local entrepreneurs shines through at another incredible port development, Columbia Gardens, where the port has made space for wine production facilities, winery tasting rooms, and local food trucks. Seeing local residents and tourists alike flock to the beautiful places created by the port, from Clover Island to Vista Field and Columbia Gardens, we were reminded of the importance of creativity and community that embodies the work of our ports. Thanks Port of Kennewick for your work and for your gracious hospitality!"*

Mr. Peterson stated the pre-construction meeting with Goodman & Mehlenbacher Inc. (GAME Inc.), for the Vista Field Southern Gateway project was held April 23, 2024. Mr. Peterson outlined some of the construction details of the project.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 14, 2024 MINUTES

**DRAFT**

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## REPORTS, COMMENTS AND DISCUSSION ITEMS

### *A. Commissioner Meetings (formal and informal meetings with groups or individuals)*

Commissioners reported on their respective committee meetings.

### *B. Non-Scheduled Items*

Ms. Scott wished the Commission safe travels to their respective conferences.

Mr. Kooiker reported the Port filed the 2023 annual financial report last week and will start the 2023 audit in the fall.

Mr. Boehnke stated the maintenance team is prepping the island for two projects: refreshing and re-staining the wood decking on the causeway and at the Gathering Place and resurfacing the marina boardwalk. Mr. Boehnke stated the two projects are part of the Local Park Maintenance Grant that was awarded in 2023.

Mr. Arntzen continues to look at opportunities for a joint meeting, which would include conducting a Commission Meeting with a local partner at an offsite location.

Mr. Arntzen reported that Ms. Lake visited the Port office and met staff and Commissioner Hohenberg on May 3, 2024.

Commissioner Hohenberg had a nice tour of Vista Field with Ms. Lake and stated he has worked with Ms. Lake on the CEO Evaluation Process, and it was nice to have the opportunity to meet with her. Ms. Lake is very experienced in her field and is a very gracious person and we had a great afternoon and thanked her for taking time out of her schedule to visit.

Commissioner Novakovich stated May Hays, West Richland City Councilmember, sent him information on a Town Hall Meeting for a Veteran's Cemetery, which will be held on May 22, 2024 from 10:00 a.m. to 12:00 p.m. at the West Richland Police Department.

## PUBLIC COMMENTS

Mike Luzzo, Kennewick. Mr. Luzzo commented on the Port's understanding of project management and bonding.

No additional comments were made.

## COMMISSION COMMENTS

No comments were made.

## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:02 p.m.

**PORT OF KENNEWICK  
REGULAR COMMISSION MEETING**

**MAY 14, 2024 MINUTES**

**DRAFT**

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***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Skip Novakovich, President*

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*Kenneth Hohenberg, Vice President*

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*Thomas Moak, Secretary*

**Port of Kennewick**

**2024 Mid-Cycle  
Budget Review  
2023-2024 Budget**

**Managing Resources &  
Accountability**

by Nick Kooiker, Deputy CEO/CFO/Auditor



- Port team has already started planning for 2025/26 budget.
- This budget update should be considered and used as a “stepping stone” for next budget cycle.



## Budget Disclosures

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# Operating Division

Revenue & Expenses

EXHIBIT A



**Revenues:**  
**\$1,717,347**

- 63% Benchmark
- Operating revenues at 71%



**Expenses:**  
**\$4,300,898**

- 63% Benchmark
- Operating expenses at 47%
- Vista Field Maintenance Costs
- Shoreline Maintenance Costs
- Temporary Labor





# Non-Operating Division

Revenue & Expenses

EXHIBIT A



**Revenues:**  
**\$11,697,478**

- 63% Benchmark
- Non-Operating Revenues at 76%
- RCCF 1135 Project
- Interest Income
- Property Tax Levy has been booked for 2024. \$450k higher than budgeted



**Expenses:**  
**\$2,195,984**

- 63% Benchmark
- Non-Operating Expenses at 54%
- Vista Field Loan Expense

# Capital Projects 2023/2024

EXHIBIT A

Item	Budget	Expended	Remaining
1. Vista Field Pavilions	\$3,300,000	\$269,050	\$3,040,580
2. Vista Field Infrastructure	\$1,325,000*	\$0	\$1,325,000*
3. Vista Field Misc	\$350,000	\$0	\$350,000
4. Vista Field Parking	\$500,000	\$96,566	\$403,434
5. Vista Field Satellite Shop	\$500,000	\$0	\$500,000
6. 1135 Shoreline	\$500,000	\$1,314	\$498,686
7. Clover Island	\$500,000	\$245,885	\$254,115
8. Columbia Drive	\$450,000	\$590,119	(\$140,119)
9. VFDF A Rehab	\$500,000	\$8,078	\$491,922
10. Art Project	\$100,000	\$0	\$100,000
11. City of Richland	\$300,000	\$0	\$300,000
12. Asset Replacement	\$500,000	\$263,536	\$236,464
13. Opportunity Fund	\$125,000	\$125,000 Encumbered	\$0
14. Misc. Capital	\$100,000	\$50,660	\$49,340





# Benton County Rural County Capital Funds

Accumulated as of 4/30/24	Funds Reimbursed to Port	Available Balance
\$4,841,330	\$ 497,001	\$4,344,329*

## RCCF Balance

- \$3,410,000 appropriated to Hangar Remodel\*
- \$934,329 unappropriated fund balance
- Accrues at approximately \$50k/month



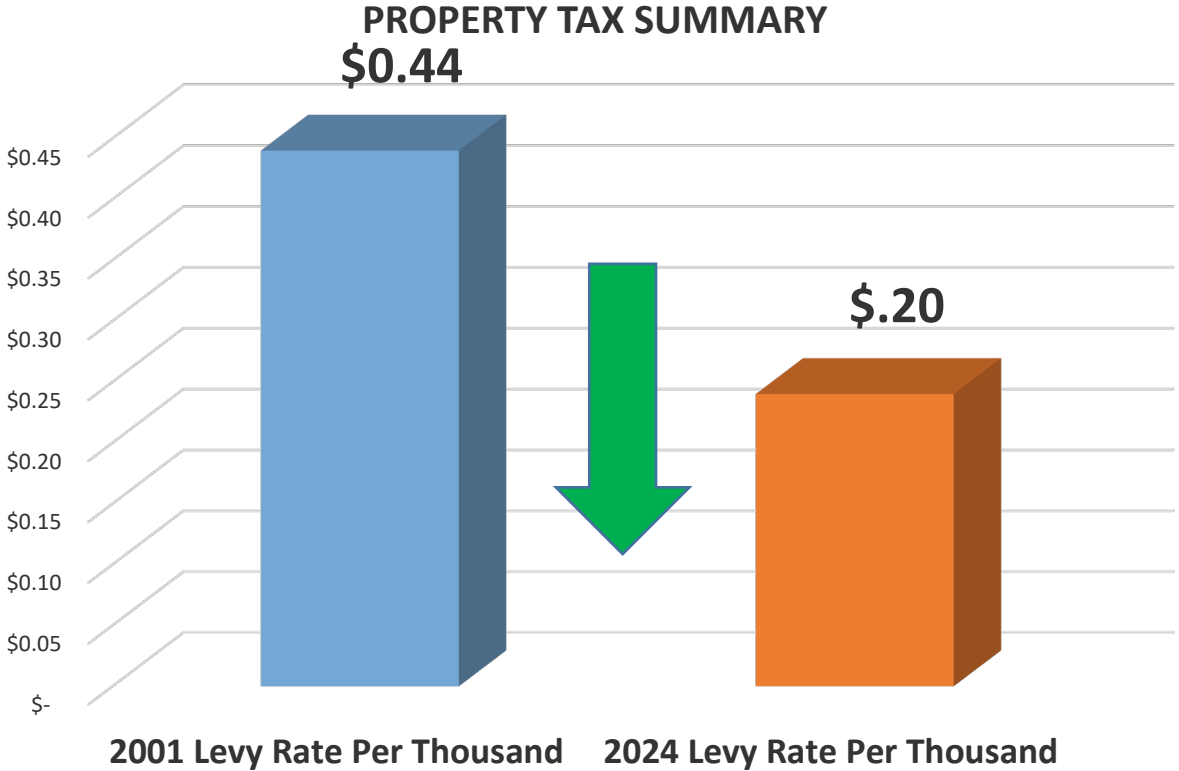
# Opportunity Fund

2023/2024 Budget: \$125,000		
Project	Encumbrance	Approved
Benton City Economic Development	\$40,000	6/13/2023
CTUIR Advertising Partnership	\$15,000	6/13/2023
Cable Bridge Lighting	\$25,000	6/13/2023
CI East Shoreline A&E	\$45,000	7/25/2023
	<b>TOTAL</b>	<b>\$ 125,000</b>
	<b>Remaining Budget</b>	<b>\$ 0</b>

# Property Tax *Levy Rate* per thousand has fallen to *only* \$0.20 in 2024!



## Property Tax Summary 2001 vs 2024



# 2025/2026 Budget Calendar

September 10, 2024  
Work Plan/Budget Elements Discussion

September 24, 2024  
Work Plan Workshop

October 8, 2024  
Work Plan Adoption

October 22, 2024  
Budget Presentation Workshop

November 12, 2024  
Budget Adoption



- Will have one more budget update prior to 2024/25 budget presentation

Questions From Commission

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A photograph of a family of four sitting on a rocky shore at sunset. The sun is low on the horizon, casting a warm orange glow over the scene. In the foreground, a woman is crouching on the left, and a man is crouching on the right. Between them, two young boys are standing. One boy is leaning forward, and the other is standing upright. They are all looking towards a fountain in a pond. The fountain is spraying water upwards, and the water in the pond is reflecting the sunset. In the background, there are some buildings and a fence.

# Thank You

Nick Kooiker  
Deputy CEO/CFO/Auditor  
509-586-1186  
[nick@portofkennewick.org](mailto:nick@portofkennewick.org)



# Washington Public Ports Association

Port of Kennewick Visit  
May 7, 2024











# VISTAFIELD

- Shovel-Ready
- Urban Mixed-Use Zoning
- Commercial, Residential, Live-Work
- Water, Sewer, Electricity, Natural Gas, Broadband
- Federal Opportunity Zone

VistaField.com  
 509.586.1186

# PHASE

# 1

## PARCELS FOR SALE











This week, WPPA was treated to a comprehensive look at the good work underway at the Port of Kennewick, where we spent the morning with their senior leadership and took a swing through their development projects at Vista Field and Columbia Gardens. Vista Field is bursting with potential, and we saw work underway converting two legacy airplane hangars into public spaces for community gathering. Those will anchor upcoming mixed-use development, with residents living above retail spaces where the port is prioritizing local businesses. The focus on local entrepreneurs shines through at another incredible port development, Columbia Gardens, where the port has made space for wine production facilities, winery tasting rooms, and local food trucks. Seeing local residents and tourists alike flock to the beautiful places created by the port, from Clover Island to Vista Field and Columbia Gardens, we were reminded of the importance of creativity and community that embodies the work of our ports. Thanks Port of Kennewick for your work and for your gracious hospitality!



Washington Public Ports Association

EXHIBIT B

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This week, WPPA was treated to a comprehensive look at the good work underway at the [Port of Kennewick](#), where we spent the morni... See more







## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director of Real Estate

**MEETING DATE:** May 28, 2024

**AGENDA ITEM:** Vista Field Purchase & Sale Agreement – Lot 15  
Resolution 2024-09

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**I. REFERENCE(S):**

- Letter of Intent dated August 16, 2023
- Resolution 2024-04 – 90 Day Right to Negotiate

**II. FINANCIAL IMPACT:** Revenue \$95,000

**III. DISCUSSION:**

Isabelle Yuri Na submitted her letter of intent to the port dated August 16, 2023, asking to purchase lot 15 in Vista Field for construction of a 3,500 square foot, single story Japanese restaurant.



Lot 15 is a highly visible corner parcel with frontage along Crosswind Boulevard, directly across from Vista Field's signature water feature and a pedestrian bridge connecting Crosswind to the future activity slated for Lot 25. The proposed building will be a stylish upscale restaurant serving Japanese style cuisine attracting customers with local wines and Japanese traditional sakes.



The port commission approved a 90 day Right-to-Negotiate on February 27, 2024 allowing port staff and Ms. Na to work through the details of a purchase and sale agreement now being submitted for commission consideration.

The proposed building design continues to proceed through the Collaborative Design Process with the port's Vista Field Town Architect, Matt Lambert of DPZ CoDesign.

Ms. Na's contractor CSW Construction is working through the permit process with the City of Kennewick and anticipates construction to begin in late summer/early Fall of this year.

Purchase and sale agreement highlights:

- Vista Field Lot 15 – 4,928 square foot parcel
- 3,500 square foot restaurant building
- Uses: Hospitality/Restaurant
- Price - \$95,000 fixed price for parcel.
- Effective date = Date PSA is approved by commissioners
- Time to completion = 24 months from effective date of PSA
- PSA to be signed by Ms. Na as owner of Kuki, LLC.
- Agreement is subject to Vista Field Covenants, Conditions and Restrictions, Vista Field Design Standards, an Obligation to Construct and Repurchase Option.
- Contingencies:
  - Seller's obligations to construct common area parking, use easement for waste container, license agreement for use of property during construction.
  - Buyer's contingencies: feasibility study, environmental conditions, and financing.

**IV. ACTION REQUESTED OF COMMISSION:**

***Motion:***

***I move approval of Resolution 2024-09 approving a purchase and sale agreement with Kuki, LLC for the purchase of lot 15 in the port's Vista Field redevelopment project; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.***

***PORT OF KENNEWICK***

**RESOLUTION No. 2024-09**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK TO  
APPROVE A PURCHASE AND SALE AGREEMENT  
WITH KUKI, LLC***

**WHEREAS**, the Port of Kennewick (“Port) Commission has authorized port staff to market parcels for sale within the Vista Field redevelopment project; and

**WHEREAS**, port staff received a proposal for construction of a single story restaurant building on Lot 15 within the first phase of Vista Field redevelopment from entrepreneur Isabelle Yuri Na of Kuki, LLC; and

**WHEREAS**, Kuki, LLC (Purchaser), has offered to purchase approximately 4,928 square feet of the area graphically depicted on “*Exhibit A*” as 697 Crosswind Boulevard at the Port of Kennewick’s Vista Field redevelopment project in Kennewick, Washington from the Port of Kennewick (Seller) for \$95,000.00; and

**WHEREAS**, Port staff and the Port attorney have reviewed the proposed Purchase and Sale Agreement and find it is in proper form with potential minor modifications prior to Closing and is in the Port’s best interest.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby authorize the Port’s Chief Executive Officer to execute a Purchase and Sale Agreement with Kuki, LLC for lot 15 in the Vista Field development; and hereby authorizes the Port’s Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**BE IT FURTHER RESOLVED** that the Port Commission declares that said property is surplus to the Port’s needs and the proposed sale as referenced above is consistent with all previous Port policies, including its Comprehensive Scheme of Development.

**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the Port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 28th day of May,  
2024.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By: \_\_\_\_\_

SKIP NOVAKOVICH, President

By: \_\_\_\_\_

KENNETH HOHENBERG, Vice President

By: \_\_\_\_\_

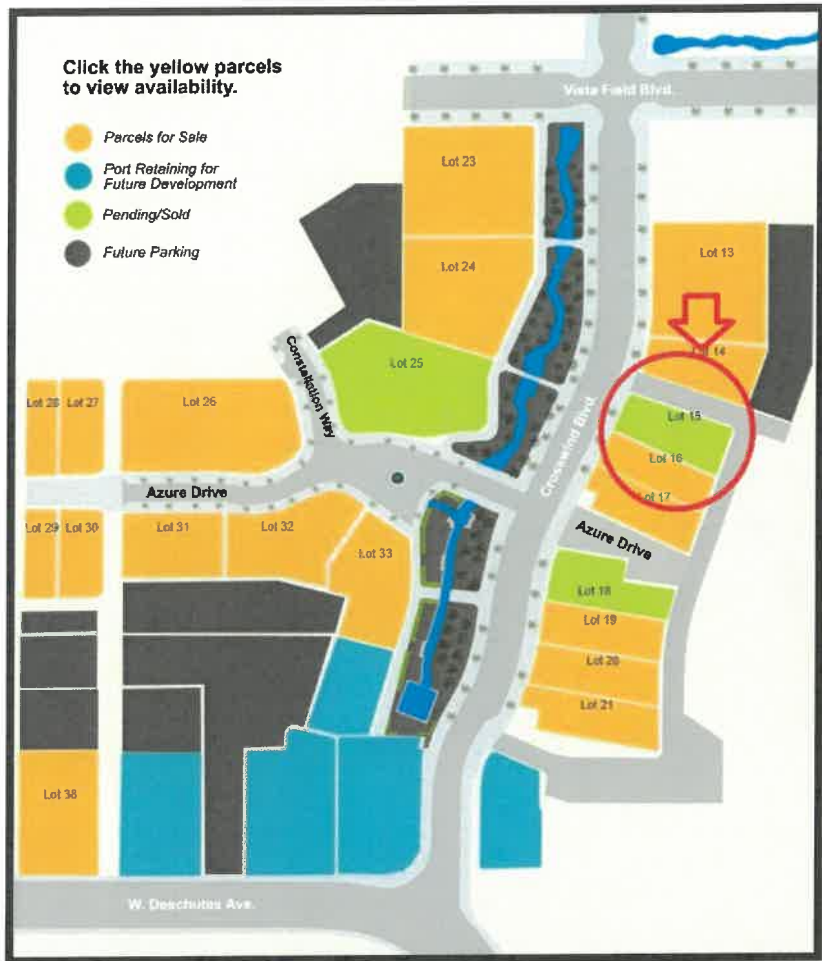
THOMAS MOAK, Secretary



**EXHIBIT A**



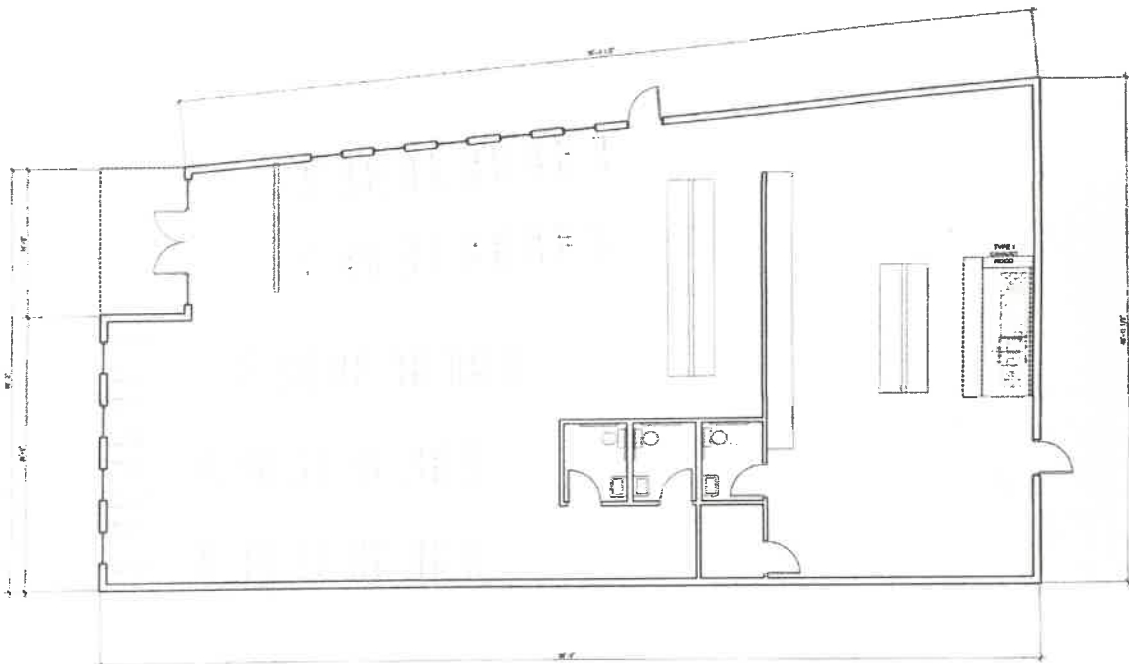
**EXHIBIT A**



**Yoori Nah**  
**arasushigrill@gmail.com**

<b>Location:</b>	697 Crosswind Blvd in Kennewick WA 99336. Lot #15.
<b>Legal name:</b>	Yoori Nah
<b>Total offer price: Use:</b>	\$95,000 (est.)
<b>Time:</b>	Japanese Restaurant
<b>Payment:</b>	The construction is planned to be completed in 2-3 years
<b>Closing Date: Size of building:</b>	Cash purchase TBD One-story restaurant of approximately 3,500 square feet

**Rough sketches:**



**Yoori Nah**

Date: 08/16/2023



**SBA Lending**

*Wells Fargo SBA Lending  
877 W Main St, FL 3  
Boise, Idaho*

May 20, 2024

RE: Commercial Real Estate Financing  
697 Crosswind Blvd  
Kennewick, WA

Dear Ms Isabelle Na,

Wells Fargo Bank is pleased to issue to you the following pre-qualification letter for the purchase of commercial real estate including construction. We have reviewed the last three years of your tax returns, and interim financials. Our preliminary analysis indicates that you may be qualified for financing of up to 80% of the total project cost.

While this letter does not constitute a commitment to lend, it is intended as an expression of interest to provide financing to you.

In closing, thank you again for giving Wells Fargo the opportunity to be of service to you. We look forward to working with you through the acquisition process.

If you have any further questions, please contact me at (714) 478-9872.

Sincerely,

*Garrett Golden*

Garrett Golden  
Vice President, Sr. Commercial Lender  
Wells Fargo SBA Lending

*\*Approval of this proposed loan will be subject to and contingent upon the credit approval of Wells Fargo Bank. The Bank, in order to get final approval, must get authorization from the U.S. Small Business Administration to make the loan.*

## COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is made as of this 28th day of May 2024 (the “Effective Date”), by and between the Port of Kennewick, a Washington municipal corporation (as “Seller”) and Kuki, LLC a Washington State Limited Liability Company (“Purchaser”), who are hereinafter singularly referred to as a “Party” or collectively as the “Parties.”

1. **PROPERTY.** The Seller agrees to sell, and the Purchaser agrees to purchase, upon the terms and conditions herein specified, that certain real property described as 697 Crosswind Boulevard, Kennewick, Benton County, Washington, as otherwise shown on **Exhibit A** attached hereto (the “Property”).

Tax Parcel No.: 132991BP5674025

The Parties also agree to execute the following agreements, which are considered material to this transaction, and shall be provided at Closing pursuant to Section 7.7:

- 1.1 Using an agreement substantially in the form attached hereto as **Exhibit D**, Seller shall provide Purchaser access to joint use parking.
- 1.2 Using an agreement substantially in the form attached hereto as **Exhibit E**, Seller shall provide Purchaser access to an area in the joint use parking lot for the location and use of a trash enclosure.

2. **PURCHASE PRICE and EARNEST MONEY.**

- 2.1 Purchase Price. The Purchase Price, inclusive of any applicable earnest money deposits, shall be paid in cash (U.S. Dollars) at Closing shall be \$95,000.00, plus or minus adjustments and credits as provided herein.
- 2.2 Earnest Money. Receipt is hereby acknowledged of \$5,000.00 delivered as earnest money. Earnest money shall be applied to the Purchase Price at Closing. Earnest money and this Agreement shall be promptly delivered by Seller to the Closing Agent (as defined in Section 7.1 below) hereinafter designated for the benefit of the Parties. Earnest money shall be non-refundable at the end of the feasibility period, as provided in Section 4.1.1 below, unless otherwise specifically provided herein.

3. **TITLE TO PROPERTY.**

- 3.1 Conveyance. At Closing Seller shall convey to Purchaser fee simple title to the Property by a duly executed and acknowledged statutory warranty deed (the “Deed”), free and clear of all defects and encumbrances, subject to those exceptions that Purchaser approves pursuant to Section 3.2 below and as otherwise described

herein (collectively the “Permitted Exceptions”).

- 3.2 Preliminary Commitment. Within five (5) business days following the Effective Date, Seller shall order a preliminary commitment for an owner’s standard coverage policy of title insurance in the amount of the Purchase Price to be issued by the Benton Franklin Title Company (the “Title Company”) and accompanied by copies of all documents referred to in the commitment (the “Preliminary Commitment”). Within thirty (30) days of Seller’s delivery of a copy of the Preliminary Comment to Purchaser, Purchaser shall advise Seller by written notice of the exceptions to title, if any, that are disapproved by Purchaser (“Disapproved Exceptions”). Seller will then have ten (10) days after receipt of Purchaser’s notice to give Purchaser notice that (i) Seller will remove Disapproved Exceptions or (ii) Seller elects not to remove Disapproved Exceptions. If Seller fails to give Purchaser notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Exceptions. In no event shall Seller have any obligation to spend any money to have Disapproved Exceptions removed.

If Seller elects not to remove any Disapproved Exemptions, Purchaser will have until the expiration of the Feasibility Study Period to notify Seller of Purchaser’s election either to proceed with the purchase and take the Property subject to those exceptions, or to terminate this Agreement. If Seller gives notice that it will cause one or more exceptions to be removed but fails to remove any of them from title on or before the Closing Date, Purchaser will have the right to either (i) elect to terminate this Agreement by written notice to Seller or (ii) proceed with the purchase and to take the Property subject to those exceptions. If Purchaser elects to terminate this Agreement, the escrow will be terminated, all documents and other funds, including Purchaser’s Earnest Money Deposit, will be returned to the Party who deposited them, and neither Party will have any further rights or obligations under this Agreement except as otherwise provided in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Purchaser shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

- 3.3 Title Policy. Seller shall cause Title Company to issue to Purchaser at Closing a standard coverage owner’s policy of title insurance insuring Purchaser’s title to the Property in the full amount of the Purchase Price subject only to the Permitted Exceptions (the “Title Policy”). The Title Policy must be dated as of the Closing Date.

#### 4. **CONDITIONS TO CLOSING.**

- 4.1 Right to Inspect the Property.

- 4.1.1 Feasibility Study. During the period beginning at the Effective Date and ending sixty (60) days thereafter (the “Feasibility Study Period”), Purchaser may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its

suitability for Purchaser's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies Purchaser deems necessary or desirable, in Purchaser's sole discretion.

Purchaser and Purchaser's agents, representatives, consultants, architects and engineers will have the right, from time to time, during the Feasibility Study Period to enter onto the Property and conduct any tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Purchaser's intended use. Purchaser agrees to replace and repair any real property, fixtures or personal property that become damaged or destroyed as a result of Purchaser investigations of the Property. Purchaser shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

If this transaction fails to close due to a default by Purchaser, Purchaser shall immediately deliver to Seller copies of any studies or inspections, appraisals or surveys and any and all information which either the Purchaser or Purchaser's consultants have obtained in connection with the feasibility study.

- 4.1.2 Environmental Studies. At any time and from time to time during the Feasibility Study Period, Purchaser and Purchaser's designees shall have the right to perform a complete environmental audit of the Property and soils tests on any portion of any of the Property, and any other technical studies which may in Purchaser's sole discretion be helpful in deciding whether to purchase the Property (collectively, the "Environmental Studies"). Seller's environmental consultant may attend any test or investigation at the Property and shall be entitled, without cost, to duplicates of any samples taken by Purchaser or any of Purchaser's Designees (or, if duplicates are not reasonably attainable, Purchaser may elect to deliver the actual samples after testing) and to copies of all written reports and data prepared by or on behalf of Purchaser or any of Purchaser's Designees. Any invasive sampling or testing permitted by Seller shall be performed in compliance with all Environmental Laws and other requirements of governmental authorities.

If any environmental assessment is performed by Purchaser, or any report created by Purchaser's consultants and agents related to the environmental condition of the Property, then Purchaser will provide copies of the same to Seller within five (5) business days of receipt thereof.

- 4.1.3 Access and Conditions. To conduct the Feasibility Study and Environmental Studies, Seller authorizes Purchaser and Purchaser's Designees the right to access the Property during the term of this Agreement. This right of entry shall be subject to the following conditions:

- a. Compliance; No Interference. The Feasibility Study and all Environmental Studies shall be conducted in full compliance with all Laws and Restrictions applicable to the Property.
- b. Insurance. Prior to the first entry on the Property, Purchaser shall provide to Seller a certificate of insurance showing that Purchaser or Purchaser's designees maintain in full force and effect a policy of comprehensive general liability insurance (i) covering the activities of Purchaser and/or Purchaser's designees in connection with the Feasibility Study and Environmental Studies, (ii) in an amount of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence from a carrier reasonably acceptable to Seller, and (iii) requiring at least thirty (30) days written notice to Seller prior to cancellation or reduction in coverage, except for non-payment of premiums, for which ten (10) days' notice shall be required.
- c. Restoration. Promptly after any physical inspection of the Property, Purchaser at its sole cost shall restore the Property to substantially the condition that existed immediately prior to such inspection.
- d. No Liens. Purchaser shall not permit any mechanics' or other liens to be filed against any portion of the Property as a result of the activities of Purchaser or Purchaser's designees, and Purchaser at its sole cost shall cause any liens so filed to be removed by bond or otherwise prior to the earlier of (i) thirty (30) days after the filing, and (ii) the time that any of the same may be enforced by any action of any kind against any part of the Property.
- e. Indemnity. Purchaser will defend, indemnify and hold Seller harmless from (a) all actual losses, damages, liabilities, claims, expenses, causes of action and judgments arising from claims by any third party (but not including Seller), and (b) any liens filed against the Property, in either instance arising from the activities of Purchaser or any of Purchaser's designees on the Property, except to the extent arising (i) from the negligence, recklessness, willful misconduct or breach of contract or law by Seller or any of Seller's Agents, (ii) as a consequence of strict liability imposed upon Seller or any of Seller's Agents as a matter of law, or (iii) from the discovery or disclosure of any Hazardous Substance or other substance in, under or about the Property (which discovery or disclosure is not the result of any act or omission of Purchaser or any of Purchaser's Designees), except to the extent exacerbated by Purchaser or any of Purchaser's Designees. Purchaser's obligations under this Section 5 shall survive the Closing or the termination of this Agreement prior to the Closing.



- 4.2 Financial Contingency. Purchaser shall also be allowed sixty (60) days from the Effective Date to find acceptable financing for the acquisition of the Property (the “Financial Contingency Period”) to its sole and exclusive satisfaction. Should Purchaser be satisfied that it has found such financing during the Financial Contingency Period then Purchaser shall provide written notice of such approval to Seller no later than the end of the Financial Contingency Period (the “Financial Approval Notice”). If Purchaser fails to provide the Financial Approval Notice by the end of the Financial Contingency Period, the Title Company shall, upon written request from Seller, immediately return the Deposit and all accrued interest thereon to Purchaser, and this Agreement shall terminate and be null and void and of no further force and effect and the Parties shall have no further rights or obligations hereunder (except for any provisions that expressly survive the termination of this Agreement).
- 4.3 Purchaser’s Contingencies. Purchaser’s obligation to purchase the Property is expressly contingent upon the following:
- 4.3.1 Feasibility Study. Purchaser’s approval, prior to expiration of the Feasibility Study Period, of the suitability of the Property as a result of the Feasibility Study; and
  - 4.3.2 Environmental Condition. Purchaser’s approval, prior to expiration of the Feasibility Study Period, of the environmental condition of the Property pursuant to Section 4.1.2; and
  - 4.3.3 Title Policy. Purchaser’s receipt of Title Company’s firm commitment to issue, upon Closing, the Title Policy as described in Section 3; and
  - 4.3.5 Sellers’ Compliance. Seller’s timely performance of all of its obligations under this Agreement; provided, Seller will be given notice of any failure on its part to perform any such obligations and will have a period of time that is reasonable under the circumstance to cure its nonperformance; and
  - 4.3.6 Financial Contingency. Purchaser’s delivery to Seller, in its sole and complete discretion, and prior to the end of the Financial Contingency Period, of a Financial Contingency Notice as described in Section 4.2; and
  - 4.3.7 Survey. A survey has been conducted on the Property and a copy has been provided to the Purchaser. This contingency shall be deemed waived or satisfied unless Purchaser provides written notice to the contrary within ten (10) business days from the Effective Date of this Agreement.

The foregoing conditions contained in this Section 4.3 are collectively referred to in this Agreement as “Purchaser’s Contingencies.” The Parties shall diligently attempt to timely satisfy all of the Purchaser’s Contingencies. Purchaser’s Contingencies are solely for the benefit of Purchaser. If any of Purchaser’s Contingencies are not satisfied, Purchaser will have the right to terminate this Agreement in writing prior to the expiration of the Feasibility Study Period. If

Purchaser elects to terminate this Agreement, the escrow will be terminated, all documents and other funds will be returned to the Party who deposited them, and neither Party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, and except that each Party shall pay one-half (1/2) of the cost of terminating the escrow. If Purchaser does not elect to terminate this Agreement, the Parties shall proceed to Closing.

- 4.4 Seller's Contingencies. Seller's Board of Directors must affirmatively vote to approve this Purchase and Sale Agreement and otherwise undertake any and all actions required by law to dispose of the Property. Purchaser acknowledges and agrees that this Agreement does not bind the Purchaser until it is signed by the Seller following approval by Seller's Board.

## 5. REPRESENTATIONS AND WARRANTIES.

- 5.1 Seller's Representations and Warranties. Except as otherwise expressly set forth in this Agreement, Seller makes no representations or warranties and shall not in any way be liable for any representations or warranties, including, without limitation, representations and warranties concerning (a) the physical condition of the Property (including, without limitation, the environmental condition, condition of the soils and groundwater conditions); (b) the Property's suitability for Purchaser's intended use; (c) any applicable building, zoning or fire laws or regulations or compliance therewith or any required permits of any governmental entities or agencies or compliance therewith; (d) the availability or existence of any water, sewer or other utilities (public or private). Purchaser acknowledges that Purchaser is relying on its own examination and inspection of the physical condition of the Property and all matters relating thereto. Seller shall have no obligation to make any repairs to the Property, and Purchaser shall accept the Property in its "as is" condition at Closing. Purchaser shall assume, as of Closing, the responsibility for and risk of all defects and conditions of the Property, including any defects and conditions that cannot be observed by casual inspection. The Parties specifically agree that at Closing the Purchaser assumes all environmental liability relating to the Property including without limitation the Washington Model Toxics Control Act ("MTCA"), the Toxic Substances Control Act, the Comprehensive Environmental Response, compensation and Liability Act ("CERCLA"), and the Resource Conservation and Recovery Act ("RCRA"), including without limitation, personal injury to or death of persons whosoever including employees, agents or contractors of the Seller, the Purchaser, or any third party, and damage to property of the Seller, the Purchaser, or any third party.

Notwithstanding the forgoing, Seller makes the following affirmative representations:

- a. Seller has full power and authority to convey the Property to Purchaser.
- b. Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.

- c. Seller has not granted any options or rights of first refusal with respect to the Property to any party other than Purchaser.
- d. Seller is not a "foreign person" as defined in Section 1445 of The Internal Revenue Code of 1986, as the same is amended from time to time (the "Code") and the regulations promulgated thereunder.
- e. To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for Purchaser's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement.

5.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that this Agreement and all documents executed by Purchaser that are to be delivered to Seller at closing are, or at the time of closing will be (i) duly authorized, executed and delivered by Purchaser, (ii) legal, valid and binding obligations of Purchaser, and (iii) in compliance with all provisions of all agreements and judicial orders to which Purchaser is a party or to which Purchaser is subject.

6. **RISK OF LOSS.** Risk of loss or damage to the Property or any part thereof prior to Closing shall be assumed by the Seller. If such loss or damage occurs prior to Closing this Agreement shall terminate and the earnest money shall be returned to the Purchaser.

7. **CLOSING.**

7.1 Closing Agent. This transaction shall be closed by Benton Franklin Title Company ("Closing Agent").

7.2 Closing Costs. Closing costs shall be allocated as follows:

<b>Seller</b>	<b>Purchaser</b>
Excise Tax	Recording Fees
Title Insurance Premium	One-Half Closing Fee Costs
One-Half Closing Fee Costs	

Other incidental closing costs shall be paid and/or allocated in accordance with local practice.

7.3 Items to be Prorated. Taxes and assessments for the current year. If applicable, water and other utilities constituting liens, shall be prorated as of date of Closing.

7.4 Closing Date - Possession. This transaction shall be closed when all contingencies have been satisfied and waived but in any event no later than ninety (90) days from Effective Date of this Agreement. "Closing" shall be the date on which all documents are recorded and funds are available for disbursement. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

- 7.5 Conveyance. At Closing Seller shall deliver to Purchaser a Statutory Warranty Deed and free of any other encumbrance or defect except those set forth in the preliminary commitment as set forth above. The Property will be subject to the Declaration of Covenants, Conditions & Restrictions for Vista Field (the "CC&Rs").
- 7.6 Seller's Escrow Deposits. On or before the Closing Date, Seller shall deposit into escrow the following:
- a. a duly executed and acknowledged Real Estate Tax Affidavit; and
  - b. a duly executed Parking Easement Agreement in the form attached hereto as **Exhibit D**; and
  - c. a duly executed Use Easement Agreement in the form attached hereto as **Exhibit E**; and
  - e. any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.
- 7.7 Buyer's Escrow Deposits. On or before the Closing Date, Buyer shall deposit into escrow the following:
- a. cash in an amount sufficient to pay the Purchase Price and Buyer's share of closing costs; and
  - b. a duly executed and completed Real Estate Excise Tax Affidavit; and
  - c. a duly executed Parking Easement Agreement in the form attached hereto as **Exhibit D**; and
  - d. a duly executed Use Easement Agreement in the form attached hereto as **Exhibit E**; and
  - f. any other documents or instruments Buyer is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.
- 7.8 Additional Instruments and Documentation. Seller and Buyer shall each deposit any other instruments and documents that are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with this Agreement.
- 7.9 Foreign Investment in Real Property Tax Act. To the extent applicable, the Parties agree to comply in all respects with Section 1445 of the Internal Revenue Code and the regulations issued thereunder.

## 8. REPURCHASE OPTION.

- 8.1 Obligation to Construct a single story building on Lot 15. The Parties agree that the Purchaser will construct a 3,500 square foot, single story, restaurant (the "Building"). The Building will be built in accordance with the following conditions:
- 8.1.1 Construction of the Building is to commence no later than ninety (90) days from the date the deed is recorded transferring the Seller's title to the Property to Purchaser, and construction must be concluded, including all landscaping, within twenty-four (24) months from the Effective Date of this Agreement;
  - 8.1.2 Commencement of construction will be evidenced by issuance of all required building/construction permits and approvals together with actual commencement of on-site construction;
  - 8.1.3 All construction shall be in accordance with the Vista Field Covenants, Conditions and Restrictions, a copy of the CC&Rs is attached hereto as **Exhibit B** and incorporated herein by reference;
  - 8.1.4 All construction shall be in accordance with the Vista Field Design Standards and approved by the Port of Kennewick assigned town architect prior to Closing, a copy of which is attached hereto as **Exhibit C** and incorporated herein by reference;
  - 8.1.5 No changes in plans or specifications may be made by Buyer without prior review and approval of the Port of Kennewick assigned town architect's written approval;
  - 8.1.6 Seller shall have the right to approve all aspects of building design, which approval shall not be unreasonably withheld or delayed.
- 8.2 Failure to Construct and Right to Repurchase. Subject to the force majeure provisions contain in Section 10.13 below, the Parties agree that in the event construction of the Building described in 8.1 above, or some other mutually agreed upon utilization of the Property, has not begun (evidenced as set forth in 8.1.1 above) Seller shall have the right to repurchase the Property at the same Purchase Price listed in Section 2.11 above, with all closing costs and real estate taxes paid by the Purchaser in cash at Closing. Seller must give Purchaser written notice of its intent to repurchase the Property within twelve (12) months of the date the deed is recorded transferring the Seller's title to the Property. In the event this repurchase provision is invoked, payment for improvements made to the site by the Purchaser which benefit the future development of the Property shall be made by Seller. Value of improvements which benefit the Property shall be established, unless otherwise agreed by the Parties, from the average of two appraisals (one obtained by Seller and one obtained by Purchaser) performed to determine the residual value of site improvements made by the Purchaser.

Closing for the repurchase of the Property shall occur in accordance with the terms

of Section 7 above, except that Purchaser shall bear all closing costs unless otherwise agreed between the Parties, and Closing shall occur no later than fifteen (15) days after delivery of the Seller's written notice. Upon Closing, Purchaser shall immediately vacate and redeliver possession of the Property to the Seller. At Closing, the Purchaser will execute a statutory warranty deed re-conveying the Property to Seller and this Agreement shall be void and of no further force or effect.

8.3 Assignment and Encumbrances. Prior to Closing, Purchaser may not assign this Agreement other than to another corporate entity owned and controlled by Purchaser. After Closing, Purchaser shall not assign, encumber or transfer any right or interest in the Property during the first twenty-four (24) months after the commencement of construction, as defined in Section 8.1.2 above, without the Seller's written approval, which approval shall not be unreasonably withheld.

8.4 Hold Harmless. Further and in consideration of the terms hereof, in the event the Seller repurchases the Property, Purchaser shall release and hold Seller harmless and shall indemnify and defend Seller from any and all claims, demands, liens, or encumbrances arising out of or connected with this Agreement and the Property.

9. Notices. All notices required by this Agreement shall be considered properly delivered when (1) personally delivered, (2) transmitted by email showing date and time of transmittal, (3) delivered by regular overnight courier, or (4) delivered or mailed by U.S. registered or certified mail, return receipt requested, and if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

**Purchaser:** Kuki, LLC  
c/o Isabelle Yuri Na  
430 George Washington Way, Suite 201  
Richland, WA 99352  
Phone No.: \_\_\_\_\_  
Email: \_\_\_\_\_

**Seller:** Port of Kennewick  
350 Clover Island Drive, Suite 200  
Kennewick, Washington 99336  
Attn: Tim Arntzen, Chief Executive Officer  
Phone No.: (509)586-1186  
Email: amber@portofkennewick.org

**With copy to:** Witherspoon Brajcich McPhee, PLLC  
601 W. Main Ave, Suite 1400  
Spokane, WA 99201  
Attn: Taud Hume, Port Counsel

Phone No.: (509) 455-9077  
Email: [thume@workwith.com](mailto:thume@workwith.com)

## 10. MISCELLANEOUS.

- 10.1 Default and Remedies. If either Party defaults under this Agreement, the non-defaulting Party may seek (i) specific performance of this Agreement, or (ii) the termination of this Agreement and retention of the deposited Earnest Money, if any.
- 10.2 Dispute Resolution and Attorney's Fees. In the event of any claim or dispute arising under this Agreement, the Parties agree to submit the same to binding arbitration at a location to be mutually agreed upon in Benton County, Washington. In the event the Parties are unable to promptly agree upon an arbitrator, the same shall be selected by the presiding judge for the Benton County Superior Court at the request of, and upon seven (7) days' notice from, any Party. The arbitrator so appointed shall be a retired superior court judge or an attorney having at least ten years' experience in matters similar to the subject of the claim or dispute. The court may establish the ground rules by which the initial arbitrator fees are to be paid. The mandatory arbitration rules, as implemented in Benton County Superior Court, shall be binding as to procedure. The arbitrator shall determine an award of reasonable attorney's fees and costs and expenses to the substantially prevailing Party. If any suit or other proceeding is instituted by either Party that is alleged not to come within the foregoing agreement for arbitration, the substantially prevailing Party as determined by the court or in the proceeding shall be entitled to recover its reasonable attorney's fees and all costs and expenses incurred.
- 10.3 Time is of the Essence. Time is of the essence of this Agreement.
- 10.4 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific [Daylight] Time.
- 10.5 Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of Washington. Venue for any dispute arising out of or related to this Agreement shall be exclusively in Benton County, Washington.
- 10.6 Authority to Execute Agreement. Each of the undersigned represents and warrants that, if not signing on his own behalf, he has the authority to bind the entity for which he/she is executing this Agreement.
- 10.7 Entire Agreement. There are no verbal or other agreements which modify or affect this Agreement, and Purchaser and Seller acknowledge that this Agreement constitutes the full and complete understanding between Purchaser and Seller.

- 10.8 Amendments. This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.
- 10.9 Broker Compensation. Except for Kristine Connolly from Coldwell Banker Tomlinson Realty, who is acting as Purchaser's broker, neither Party has had any contact or dealings regarding said property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplating this Agreement.

If any broker or finder perfects a claim for a commission or finder's fee based upon any other contract, dealings or communication, the Party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other Party from and against any liability, cost or damages, including attorney's fees and costs, arising out of that claim.

Commissions will only be paid to licensed real estate brokers. In order to be paid, the broker must submit a signed bona fide offer plus a signed appointment from the potential purchaser authorizing the broker to negotiate for the potential purchaser in order to claim the commission. The broker authorization must include the name of the proposed purchaser and the date of their first contact with said purchaser. Unless this provision is strictly complied with, the Seller will not pay any claimed commission.

After final approval of the sale by the Port Commission and after receipt of all funds due at closing, Seller will pay to the licensed real estate broker negotiating any such sale a commission of four (4) percent of the sale price on the sale of the property.

- 10.10 Obligations to Survive Closing. The obligations contained herein shall survive Closing.
- 10.11 Termination. Unless otherwise agreed between the Parties, this Agreement shall terminate unless signed by Purchaser and returned to Seller before 5:00 p.m. the 3<sup>rd</sup> business day following the Port of Kennewick's next scheduled Commission meeting.
- 10.12 Force Majeure. Except as otherwise specifically provided in this Agreement, in the event either Party is delayed or prevented from performing any of its respective obligations under this Agreement by reason of acts of God, governmental order or requirement, epidemic, pandemic, fire, floods, strikes, cyber attack, or due to any other cause beyond the reasonable control of such Party, then the time period for performance such obligations shall be extended for the period of such delay.
- 10.13 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.



10.14 Waiver. Neither Seller's nor Purchaser's waiver of the breach of any covenant under this Agreement will be construed as a waiver of a subsequent breach of the same covenant.

10.15 Exhibits. The following exhibits are attached hereto and made a part of this Agreement by reference:

- Exhibit A:** Legal Description
- Exhibit B:** Port of Kennewick Vista Field Covenant's, Conditions and Restrictions
- Exhibit C:** Port of Kennewick Vista Field Design Standards
- Exhibit D:** Parking Easement Agreement (Form)
- Exhibit E:** Use Easement Agreement (Trash Receptacle) (Form)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

**SELLER: Port of Kennewick**  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

\_\_\_\_\_  
Nick Kooiker, Port Auditor/CFO

\_\_\_\_\_  
Taud Hume, Port Counsel

**PURCHASER: Kuki, LLC**

By: \_\_\_\_\_  
Isabelle Yuri Na

Its: Owner \_\_\_\_\_

**ACKNOWLEDGEMENTS**

State of Washington   )  
  )ss  
County of Benton     )

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the 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 he is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

State of Washington   )  
  )ss  
County of Benton     )

On this day personally appeared before me **Isabelle Yuri Na** to me known to be the owner of **Kuki Izakaya, LLC**, a limited liability company that executed the 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 he is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

*(Legal Description of the Property)*

**BINDING SITE PLAN #5674, LOT 15. RECORDED IN VOLUME 1 OF SURVEYS AT PAGE 5674, RECORDS OF BENTON COUNTY, WASHINGTON. AF#2022-020339, 06/16/2022. SEE SURVEY 5674**

**EXHIBIT B**

*(Port of Kennewick Vista Field Covenants, Conditions, and Restrictions)*

**EXHIBIT C**

*(Port of Kennewick Vista Field Design Standards)*

**EXHIBIT D**

*(Parking Easement Agreement)*

Filed for Record at Request of and  
copy returned to:  
Taud A. Hume  
Witherspoon Brajcich McPhee, PLLC  
601 West Main Avenue, Suite 1400  
Spokane, WA 99201-0677

**Document Title:** Parking Easement Agreement  
**Reference Number of Related Document:** N/A  
**Grantor(s):** Port of Kennewick  
**Grantee(s):** \_\_\_\_\_  
**Legal Description:** See Attachment 1  
**Assessor's Tax Parcel Number:**

## **PARKING EASEMENT AGREEMENT**

**THIS PARKING EASEMENT AGREEMENT** (this "Agreement") is made effective as of this \_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date") by and between THE PORT OF KENNEWICK, a Washington municipal corporation (as "Grantor") and KUKI, LLC (as "Grantee), who are collectively referred to herein as the "Parties."

WHEREAS, Grantor is the owner of a Benton County Parcel No. \_\_\_\_\_ (the "Grantor Property") located in Benton County, Washington; and

WHEREAS, the Grantor Property contains a surface parking lot; and

WHEREAS, Grantee is the owner of Benton County Parcel No. \_\_\_\_\_ (the "Grantee Property"); and

WHEREAS, Grantee desires an easement for ingress and egress for pedestrian and vehicular ingress and egress and vehicular parking over and across Grantor's Property for the use of joint use parking spaces thereon; and

WHEREAS, Grantor desires to provide an easement for ingress and egress over and across the Grantor Property for the aforementioned purposes.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. All of the recitals above are incorporated by reference as though fully set forth in this Agreement.
2. Grant of Easement; Use; Consideration.
  - 2.1 Parking Easement. Grantor hereby grants and conveys a perpetual, non- exclusive easement for the benefit of Grantee, its agents, employees, licensees, invitees, contractors and assigns for pedestrian and vehicular ingress and egress and vehicular parking over and across that portion of the Grantor's Property depicted on **Attachment 1** (the "Parking Easement Area") Grantor shall construct, delineate and paint such parking spaces in the same manner that all other parking spaces in the surface parking lot are marked.
  - 2.2 Use of Parking Easement Area by the Parties. Grantee may use the Parking Easement Area for ingress and egress to and from the Grantee Property. Grantor, its successors, agents, licensees and assigns shall each have the right to use the Parking Easement Area for all purposes as are otherwise permitted by federal, state, and local statutes, laws, ordinances, codes, regulations and rules, or as determined by the Grantor, so long as such use does not interfere with Grantee's rights established hereunder.
  - 2.3 Consideration. Grantor acknowledges receipt from Grantee of full payment in the amount of TEN DOLLARS (\$10.00), determined as consideration for the mutual promises entered into herein.
3. Maintenance. All construction, operation and maintenance of any parking and roadway surfaces, sidewalks, landscaping or improvements of any kind located within the Parking Easement Area shall be undertaken at the sole discretion of the Grantor or its successors and assigns, which may, but does not necessarily need to, include an owners association, and all costs incurred thereby shall be borne exclusively by the Grantor or its successors and assigns; except as otherwise caused or necessitated by Grantee's negligence or willful misconduct regarding it's use of the Parking Easement Area.
4. Representations by Grantor. Grantor represents and warrants to Grantee that Grantor is the sole holder of fee title to the Grantor Property, and that the execution, recordation and performance of this Agreement will not breach any obligation, or result in a default under, any agreement or instrument to which Grantor is a party, or that affects the Grantor Property, or breach or otherwise violate any court order applicable to Grantor.
5. Covenant to Run with Land. The easements, benefits, and obligations contained herein: (i) will be deemed to be covenants that run with the Grantor Property; (ii) will bind every person having any fee, leasehold or other interest in any portion of the Grantor Property at any time or from time-to-time to the extent that such portion is affected or bound by the covenant, restriction or provisions to be performed on such portion; and (iii) will inure to



the benefit of and will be binding upon the Parties, and their respective successors and assigns and to the benefit of mortgagees, lessees, and sublessees under mortgages, leases, and subleases covering the Grantor Property, or any portion thereof and beneficiaries and trustees under deeds of trust covering the Grantor Property, or any portion thereof.

6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the use and maintenance of the Parking Easement Area described herein. By executing this Agreement, the Parties specifically intend that this Agreement will supersede all prior agreements and understandings between the Parties relating to the subject matter of this Agreement. The Parties acknowledge that there are not any verbal understandings or other agreements which in any way change the provisions set forth in this Agreement.
7. Indemnification. Grantee hereby agrees to defend, indemnify, and hold Grantor, its officers, directors, employees, agents, attorneys, insurers, authorized representatives, parents, subsidiaries, affiliates, predecessors, successors and assigns, harmless from and against all demands, claims, losses, damages, causes of action, or judgments, and all reasonable expenses, including attorneys' fees, incurred by Grantor in investigating or resisting the same, for injury to person, loss of life, or damage to property caused by or arising out of the use of the Parking Easement Area by Grantee, its employees, agents, representatives, invitees and licensees, unless caused in whole or in part by the gross negligence or willful misconduct of Grantor.
8. Insurance. Grantor shall procure and keep in force a general property casualty insurance policy which shall include the Parking Easement Area.
9. Amendment of Easement. The Parties hereto may not alter or amend this Agreement except as by a written instrument signed by all of the Parties hereto.

*[Remainder of page left intentionally blank. Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date written above.

**SELLER: Port of Kennewick**  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

\_\_\_\_\_  
Nick Kooiker, Port Auditor/CFO

\_\_\_\_\_  
Taud Hume, Port Counsel

**PURCHASER: KUKI, LLC.**

By: \_\_\_\_\_  
Isabelle Yuri Na

By: \_\_\_\_\_

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Isabelle Yuri Na to me known to be the owner of KUKI, LLC, a limited liability company that executed the 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 he is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me Tim Arntzen, the Chief Executive Officer of the Port of Kennewick to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public (Signature)

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

My appointment expires: \_\_\_\_\_

**ATTACHMENT 1**

*(Description of Parking Easement Area)*

**EXHIBIT E**

*(Use Easement Agreement - Trash Receptacle)*

Filed for Record at Request of and  
copy returned to:  
Taud A. Hume  
Witherspoon Brajcich McPhee, PLLC  
601 West Main Avenue, Suite 1400  
Spokane, WA 99201-0677

**Document Title:** Use Easement Agreement  
**Reference Number of Related Document:** N/A  
**Grantor(s):** Port of Kennewick, a Washington municipal corporation  
**Grantee(s):**  
**Legal Description:** See attached **Attachment 1**  
**Assessor's Tax Parcel Number:**

## USE EASEMENT AGREEMENT

(Trash Receptacle)

**THIS USE EASEMENT AGREEMENT** (this "Agreement") is made effective as of this \_\_\_ day of \_\_\_\_\_, 2024, by and between PORT OF KENNEWICK, a Washington municipal corporation (as "Grantor") and KUKI, LLC (as "Grantee"); who are collectively referred to herein as the "Parties."

WHEREAS, Grantor is the owner of Benton County Parcel No. \_\_\_\_\_ (the "Grantor Property"); and

WHEREAS, Grantee is the owner of Benton County Parcel No. \_\_\_\_\_ located in Benton County, Washington; and

WHEREAS, Grantee desires an easement on the Grantor Property for pedestrian and vehicular ingress and egress over, across, upon and through the Use Easement Area (as described on **Attachment 1**) for the use and placement of a trash receptacle; and

WHEREAS, Grantor desires to provide an easement for pedestrian and vehicular ingress and egress over, across, upon and through the Use Easement Area for the aforementioned purposes.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. All of the recitals above are incorporated by reference as though fully set forth in this Agreement.
2. Grant of Easement and Use of Use Easement Area.
  - 2.1 Use Easement. Grantor, for and in the consideration of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys a perpetual, non-exclusive easement for the benefit of Grantee, its successors, agents, employees, licensees, invitees, contractors and assigns (the "Grantee Parties") for pedestrian and vehicular ingress and egress over, across, upon and through that portion of the Grantor Property depicted on **Attachment 1** (the "Use Easement Area") for the placement, use and maintenance of a trash receptacle.
  - 2.2 Use of the Use Easement Area by the Parties. Grantee may use the Use Easement Area only for pedestrian and vehicular ingress and egress over, across, upon and through the Grantor Property. Grantee shall at no time place any obstruction within the Use Easement Area, and the Grantee's use of the Use Easement Area shall not interfere with Grantor's use and enjoyment of the Grantor Property or the use and enjoyment of the Grantor Property by other authorized third parties. The Grantor shall have the right to use the Use Easement Area for all purposes as are otherwise permitted by federal, state, and local statutes, laws, ordinances, codes, regulations and rules, or as determined by the Grantor, so long as such use does not interfere with Grantee's rights hereunder. Grantee shall comply with all reasonable rules and regulations related to the Use Easement Area implemented by Grantor from time to time.
3. Construction and Maintenance. All construction of any improvements of any kind located within the Use Easement Area shall be undertaken at the sole discretion of the Grantor, and all costs incurred thereby shall be borne exclusively by the Grantor.
4. Representations by Grantor. Grantor represents and warrants to Grantee that Grantor is the sole holder of fee title to the Grantor Property, and that the execution, recordation and performance of this Agreement will not breach any obligation, or result in a default under, any agreement or instrument to which Grantor is a party, or that affects the Grantor Property, or breach or otherwise violate any court order applicable to Grantor.
5. Indemnification. Grantee hereby agrees to defend, indemnify, and hold the Grantor, its officers, members, directors, employees, agents, attorneys, insurers, authorized representatives, parents, subsidiaries, affiliates, predecessors, successors and assigns, harmless from and against all demands, claims, losses, damages, causes of action, or judgments, and all reasonable expenses, including attorneys' fees, incurred by Grantor in

investigating or resisting the same, for injury to person, loss of life, or damage to property caused by or arising out of the use of the Use Easement Area by the Grantee Parties, or any breach of the Grantee Parties' obligations hereunder, except to the extent caused in whole or in part by the gross negligence or willful misconduct of Grantor.

6. Insurance. Grantor shall procure and keep in force a general property casualty insurance policy which shall include the Use Easement Area.
7. Covenant to Run with Land. The easements, benefits, and obligations contained herein: (i) will be deemed to be covenants that run with the Grantor Property; (ii) will bind every person having any fee, leasehold or other interest in any portion of the Grantor Property at any time or from time-to-time to the extent that such portion is affected or bound by the covenant, restriction or provisions to be performed on such portion; and (iii) will inure to the benefit of and will be binding upon the Parties, and their respective successors and assigns and to the benefit of mortgagees, lessees, and sublessees under mortgages, leases, and subleases covering the Grantor Property, or any portion thereof and beneficiaries and trustees under deeds of trust covering the Grantor Property, or any portion thereof.
8. Amendment. The Parties hereto may alter or amend this Agreement only by a written instrument signed by all of the Parties.

*[Remainder of page left intentionally blank. Signature page to follow.]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date written above.

**SELLER: Port of Kennewick**  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

\_\_\_\_\_  
Nick Kooiker, Port Auditor/CFO

\_\_\_\_\_  
Taud Hume, Port Counsel

**PURCHASER: KUKI, LLC**

By: \_\_\_\_\_  
Isabelle Yuri Na

By: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me Isabelle Yuri Na, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public (Signature)

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

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me Tim Arntzen, the Chief Executive Officer of the Port of Kennewick to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public (Signature)

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

My appointment expires: \_\_\_\_\_

**ATTACHMENT 1**

*(Use Easement Area)*

## PROPERTY USE LICENSE AGREEMENT

This Property Use License Agreement (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between the Port of Kennewick, a Washington municipal corporation (as “Licensor”) and \_\_\_\_\_, a Washington State corporation (referred to as “Licensee”), who are hereinafter singularly referred to as a “Party” or collectively as the “Parties.”

### RECITALS

A. Licensee is the owner of real property commonly described as 697 Crosswind Blvd, Kennewick, Benton County, Washington, and legally described as:

[INSERT LEGAL DESCRIPTION]

(the “Licensee Property”); and

B. In order to provide a staging area for Licensee’s construction of improvements on the Licensee Property, Licensee would like to license from Licensor the real property described on **Attachment 1** affixed hereto (the “License Area”); and

C. Licensor is willing to grant a revocable and exclusive license to Licensee for the use of the License Area under the terms and conditions set forth herein.

### AGREEMENT

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

1. Recitals. The foregoing recitals are hereby incorporated herewith as if fully set forth herein.

Grant of License; Purpose. Licensee is in the process of developing the Licensee Property. Licensor hereby grants to Licensee and its employees, agents, contractors, invitees and licensees a revocable and exclusive license to use the License Area for the narrow purpose of a temporary laydown area for the storage of construction materials related to the construction of improvements on the Licensee Property (the “License”). The License Area shall be maintained by Licensee, at Licensee’s sole cost and expense, in a clean and safe condition. Licensee may not erect or install any other structures or improvements in the License Area without the prior written consent of Licensor.

2. Term; Termination. The term of the License shall commence on the Effective Date and

continue for a period of twenty-four (24) months, which may be extended by written agreement of the Parties (the "Term"). Notwithstanding the foregoing, either Party can terminate this Agreement at any time, and for any reason whatsoever, upon not less than thirty (30) days advance written notice to the other Party.

3. License Fee & Costs. Licensee shall pay One Thousand Dollars (\$1,000.00) to Licensor for its use of the License Area, provided, however, Licensee shall be responsible for all other costs, if any, relating to its use of the License Area.
4. Compliance With Laws, Rules and Regulations. Licensee shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements, in effect during the Term hereof regulating the use and occupancy of the License Area. Licensee shall obtain, at its sole cost and expense, any permits or licenses that are required in connection with its Use. Licensee shall not commit any waste upon the License Area, or create any public or private nuisance or other act which is unlawful. Licensee shall also observe and comply with all reasonable rules and regulations put into effect by Licensor. During the Term, Licensor shall not use the License Area in any manner that would materially interfere with Licensee's Use.
5. Environmental and Hazardous Materials: Licensee shall not generate, handle, store, or dispose of any Hazardous Materials on, under, or in the license area. Licensee shall comply with all environmental laws during the term of this Agreement. Licensee agrees to indemnify, defend and hold Licensor harmless from and against any and all loss, damage, liability and expense related to environmental conditions, Hazardous Materials or any other environmental laws and regulations resulting directly or indirectly from Licensee's activities on the license area.

The term "Hazardous Materials" as used herein shall include, but not be limited to, asbestos, flammable explosives, dangerous substances, pollutants, contaminants, hazardous wastes, toxic substances, and any other chemical, material or related substance, exposure to which is prohibited or regulated by any governmental authority having jurisdiction over the license area, any substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, by Superfund Amendments and Reauthorization Act 42 U.S.C. §6901, *et seq.*; the Hazardous Materials Transportation Act, 42 U.S.C. §6901, *et seq.*; Clean Air Act, 42 U.S.C. §7901, *et seq.*; Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*; Clean Water Act, 33 U.S.C. §1251, *et seq.*; the laws, regulations or rulings of the state in which the license area is located or any local ordinance affecting the license area; or the regulations adopted in publication promulgated pursuant to any of such laws and ordinances.

"Environmental Law" means any federal or state regulation promulgated to regulate Hazardous Substances, including, but not limited to, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.*, Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 960 I *et seq.*, Federal Hazardous Materials Transportation Control

Act, 49 U.S.C. Section 1801 *et seq.*, Federal Clean Air Act, 42

U.S.C. Section 7401 *et seq.*, Federal Water Pollution Control Act, Federal Water Act of 1977, 33

U.S.C. Section 1251 *et seq.*, Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 *et seq.*, Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*, Federal Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*, Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder, all as amended from time to time.

“Hazardous Substances” shall include, without limitation: (a) those substances included within the definition of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*) (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) (“SARA”), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*) (“RCRA”), and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, and in the regulations promulgated pursuant to said laws, all as amended; (b) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (c) any material, waste, or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (33

U.S.C. §1321 ); or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (E) flammable explosives, or (F) radioactive materials; (d) those substances defined as “dangerous waste,” “hazardous waste,” or as “hazardous substances” under the Water Pollution Control Act, RCW 90.48.010 *et seq.*, the Hazardous Waste Management Statute, RCW 70.105.010 *et seq.*, and the Toxic Substance Control Act (Senate Bill No. 6085), RCW 70.105B.010 *et seq.*, the Model Toxics Control Act, RCW 70.105B.010 *et seq.*, and the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et seq.*, and in the regulations promulgated pursuant to said laws; (e) such other substances, materials, and wastes which are or become regulated as hazardous or toxic under applicable local, state, or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

Licensee acknowledges that the License Area are to be maintained as a tobacco, drug

and weapon free environment. Licensee agrees to prohibit tobacco, drugs and weapons at or about the License Area.

6. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between Licensor and Licensee, or to impose any partnership obligation or liability upon them. No Party to this Agreement shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.
7. Waiver of Claims by Licensee. In consideration of the terms and conditions of this Agreement, Licensee does hereby expressly waive and release any and all claims against Licensor, its officers, directors, employees, agents, attorneys, and contractors arising out of any accident, illness, injury, damage or other loss or harm to, or incurred or suffered by, the Licensee or any third party guests, invitees or licensees of Licensee in connection with or incidental to activities conducted by Licensee within or upon the License Area.
8. Indemnity. Licensee shall defend, indemnify and hold Licensor, its officers, officials, and employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or resulting from the negligent or wrongful acts, errors or omissions of the Licensee in performance of this Agreement. Licensee understands and agrees that the duty to defend is absolute and shall arise immediately upon receiving written notice of its obligation to defend from Licensor, and is not otherwise contingent upon a finding of negligence or wrongful acts, errors or omissions by a court. It is further specifically and expressly understood that the indemnification provided herein constitutes a waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.
9. Insurance.
  - 9.1 The Licensee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Licensee, its agents, representatives, or employees.
  - 9.2 In the event of liability for damages arising out of such services, or bodily injury to persons or damages to property, caused by or resulting from the concurrent negligence of the Licensee and Licensor, its officers, officials, employees, and volunteers, the Licensee's liability hereunder shall be only to the extent of the Licensee's negligence.
  - 9.3 Minimum Scope of Insurance. Licensee shall obtain insurance of the types described below:
    - 9.3.1 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability



coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

9.3.2 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. Licensor shall be named as an additional insured under Licensee's Commercial General Liability insurance policy. Licensor, its officers, officials, employees and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

9.3.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

9.4 Minimum Amounts of Insurance. Licensee shall maintain the following insurance limits:

9.4.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

9.4.2 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

9.4.3 Professional Liability insurance shall be written with limits no less than 2,000,000 per claim and \$2,000,000 policy aggregate limit.

9.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

9.5.1 Licensee's insurance coverage shall be primary insurance. Any insurance, self-insurance, or insurance pool coverage maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

9.5.2 Licensee's insurance shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days prior written notice has been given to Licensor.

9.5.3 Self-insured retentions must be declared to and approved by Licensor.

9.6 Waiver of Subrogation. Licensee hereby grants to the Licensor a waiver of any right to subrogation which any insurer of said Licensee may acquire against Licensor by virtue of the payment of any loss under such insurance. Licensee agrees

to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Licensor has received a waiver of subrogation endorsement from the insurer.

9.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

9.8 Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

9.8.1 The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

9.8.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

9.8.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Licensee must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

9.9 Verification of Coverage. Licensee shall furnish Licensor with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Licensee before commencement of the work.

9.10 Subcontractors. Licensee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Licensee-provided insurance as set forth herein, except Licensee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. Licensee shall ensure that the Licensor is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as the Insurance Services Office Additional Insured endorsement CG 20 38 04 13.

9.11 Special Risks or Circumstances. Licensor reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## 10. General.

10.1 Headings. Titles to Sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

10.2 Entire Agreement. This Agreement is the final and complete expression of Licensor and Licensee relating in any manner to the use and occupancy of the License Area and other matters set forth in this Agreement. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and

the covenants and agreements of this Agreement shall not be altered, modified or added to except in writing signed by both Licensor and Licensee.

- 10.3 Severability. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.
- 10.4 Notices. All notices under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, to Licensor and to Licensee at such addresses as may from time to time be designated by any such Party in writing. Notices mailed as aforesaid shall be deemed given on the date of such mailing. Licensee shall provide the Licensor notice within 24 hours either before or after a helicopter landing on License Area. Email or phone notification is acceptable.
- 10.5 Counterparts. This Agreement may be executed in counterparts, each of which, when combined, shall be deemed one single, binding agreement.
- 10.6 Maintenance. Licensee shall be responsible for all maintenance of the License Area as may be required for proper and safe fulfillment of its anticipated activities under this Agreement. Licensee may not install any improvements without the written consent of Licensor, which may be unilaterally withheld within the sole and absolute discretion of Licensor. Licensee shall repair any damage, and reasonably restore any area affected by the rights granted hereunder on the Property as close as reasonably possible to its original or natural state.
- 10.7 Authority. The signatories to this Agreement represent and warrant that they have the authority to act on behalf of themselves or their corporations, and have done so by executing this document.
- 10.8 Attorneys Fees. If a suit, action, or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party will be entitled to recover its attorney and other expert fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

*[Remainder of page left intentionally blank. Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date written above.

**LICENSOR: Port of Kennewick**  
A Washington Municipal Corporation  
By Authority of its Board of Commissioners

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive Officer

Approved:

Approved as to form:

\_\_\_\_\_  
Nick Kooiker, Port Auditor/CFO

\_\_\_\_\_  
Taud Hume, Port Counsel

**LICENSEE: CONTRACTOR**

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT 1**

(Description of License Area)