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AGENDA

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

June 11, 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 June 4, 2024
 - B. Approval of Warrant Register Dated June 11, 2024
 - C. Approval of Regular Commission Meeting Minutes May 28, 2024
- VI. PRESENTATIONS**
 - A. Vista Field Proposal, BlueChart Homes, LLC; Resolution 2024-10 (TIM/AMBER)
- VII. ACTION ITEMS**
 - A. Approval of Goal #10 for CEO; Resolution 2024-11 (NICK/CAROLYN)
 - B. Plymouth Holdings/Comp Scheme Review (LARRY/TANA)
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Commission Meetings (formal and informal meetings with groups or individuals)
 - B. Non-Scheduled Items
(LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/MICHAEL/CAROLYN/ TIM/KEN/TOM/SKIP)
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- X. ADJOURNMENT**

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



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

MAY 28, 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 (via telephone)
Kenneth Hohenberg, Vice President (via telephone)
Thomas Moak, Secretary (via telephone)

Staff Members: Tana Bader Inglima, Deputy Chief Executive (via telephone)
Nick Kooiker, Deputy Chief Executive Officer/CFO
Amber Hanchette, Director of Real Estate (via telephone)
Bridgette Scott, Executive Assistant (via telephone)
Lisa Schumacher, Special Projects Coordinator (via telephone)
David Phongsa, Marketing/Capital Projects Coordinator (via telephone)
Carolyn Lake, Port Counsel (via telephone)

Commissioner Novakovich stated due to Mr. Boehnke's absence, Item 7A, Kennewick Waterfront is removed.

PLEDGE OF ALLEGIANCE

Ms. Scott led the Pledge of Allegiance.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated May 15, 2024**
Direct Deposit and E-Payments totaling \$160,858.04
- B. Approval of Warrant Register Dated May 28, 2024**
Expense Fund Voucher Number 105895 through 105936 for a grand total of \$119,056.92
- C. Approval of Regular Commission Meeting Minutes May 14, 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 28, 2024 MINUTES

DRAFT

PRESENTATIONS

A. Vista Field Lot #15 Purchase and Sale Agreement

Ms. Hanchette presented a Purchase and Sale Agreement (PSA) with Kuki, LLC. for Lot 15 in Vista Field and outlined the details of the planned Japanese restaurant (*Exhibit A*).

Commission and Port staff discussed the details of the PSA and expressed their excitement for the new Japanese restaurant.

MOTION: Commissioner Hohenberg moved to approve 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; Commissioner Moak seconded.

Discussion:

Commissioner Hohenberg looks forward to seeing this business thrive and he hopes that they stay so busy that they'll have to look for another location in the future as well. Commissioner Hohenberg has heard great things about this restaurant and he and his wife are looking forward to frequenting it after it's open.

Commissioner Moak stated he hopes this is the first of many restaurants that we will see at Vista Field and being the first one in, he hopes that will give them a leg up and is looking forward to that.

PUBLIC COMMENTS

No comments were made.

With no further discussion, motion carried unanimously. All in favor 3:0.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Vista Field Southern Gateway Project Update

Ms. Bader Inglima presented a construction update for the Vista Field Southern Gateway project (*Exhibit B*). Mr. Phongsa has been posting photos to the Port's social media accounts to keep the public apprised of the project.

B. HRA VEBA Board Nomination

Mr. Kooiker received a solicitation from the Health Reimbursement Account Voluntary Employees' Beneficiary Association (HRAVEBA) Trust Board seeking a trustee board member. Mr. Kooiker and Mr. Arntzen discussed it at length, and it was determined that this would be good for the Port of Kennewick, because we are heavily vested in the VEBA trust as a benefit for Port staff and Commissioners. Ms. Bader Inglima has drafted a nomination letter nominating Mr. Kooiker to sit on the VEBA Trust Board; however, that does not mean that he will get nominated. The position requires two meetings per year, a \$25.00 per year fee, and it is an unpaid position.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

MAY 28, 2024 MINUTES

DRAFT

Ms. Bader Inglima clarified that the HRA VEBA is a nonprofit, multiple employer, voluntary employee benefits association which offers a funded health reimbursement arrangement and HRA. It has been a significant benefit to our Port, and we would like to make sure it is solvent, and stays managed well. It is a seven-member board of trustees that manages all the assets and with Mr. Kooiker's accounting background Mr. Arntzen felt it would be worthwhile to nominate him. If the Commission concurs, then we would send the nomination letter along with a bio.

The Commission supports sending a nomination letter for Mr. Kooiker for the HRA VEBA Board of Trustees.

C. RCO Grant Update

Ms. Bader Inglima presented the progress on the projects that the Port maintenance staff have made on the RCO Local Parks Maintenance Grant projects (*Exhibit C*).

D. Commissioner Meetings (formal and informal meetings with groups or individuals)

Commissioners reported on their respective committee meetings.

E. Non-Scheduled Items

Ms. Bader Inglima shared that the celebration of life for Rod Mineke will be held at the Clover Island Yacht Club on July 6th at 1:00 p.m. As you recall, Mr. Mineke was instrumental in working with the Port to rebuild the Clover Island Yacht Club (West Marina Professional Building).

Mr. Kooiker reported last weekend was the first weekend for the Clover Island concert series at the Clover Island Inn, featuring the new portable stage. Mr. Kooiker has seen many positive comments on social media about how successful the weekend was with the new stage. Mr. Kooiker thanked the Commission for investing in the vibrancy of Clover Island.

Commissioner Hohenberg thanked the maintenance team for their diligence in keeping Port properties maintained and free from weeds and the Vista Field water features clear. Commissioner Hohenberg offered kudos to the Port staff because they do the heavy lifting, and he appreciates the efforts of staff to get the Port to this point of selling property at Vista Field.

Commissioner Novakovich also heard a lot of positive comments about that stage over the weekend and thanked Port staff and his fellow Commissioners for agreeing to put that stage there and believes it will bring more attention to the island and the Port of Kennewick.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

**PORT OF KENNEWICK
REGULAR COMMISSION MEETING**

MAY 28, 2024 MINUTES

DRAFT

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 2:45 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Skip Novakovich, President

Kenneth Hohenberg, Vice President

Thomas Moak, Secretary

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: DocuSigned by:
Skip Novakovich
0E53A30E1C8E442...

SKIP NOVAKOVICH, President

By: DocuSigned by:
Kenneth Hohenberg
89F77EAC8921416...

KENNETH HOHENBERG, Vice President

By: DocuSigned by:
Thomas Moak
A35176A2D2CD413...

THOMAS MOAK, Secretary

EXHIBIT A



EXHIBIT A

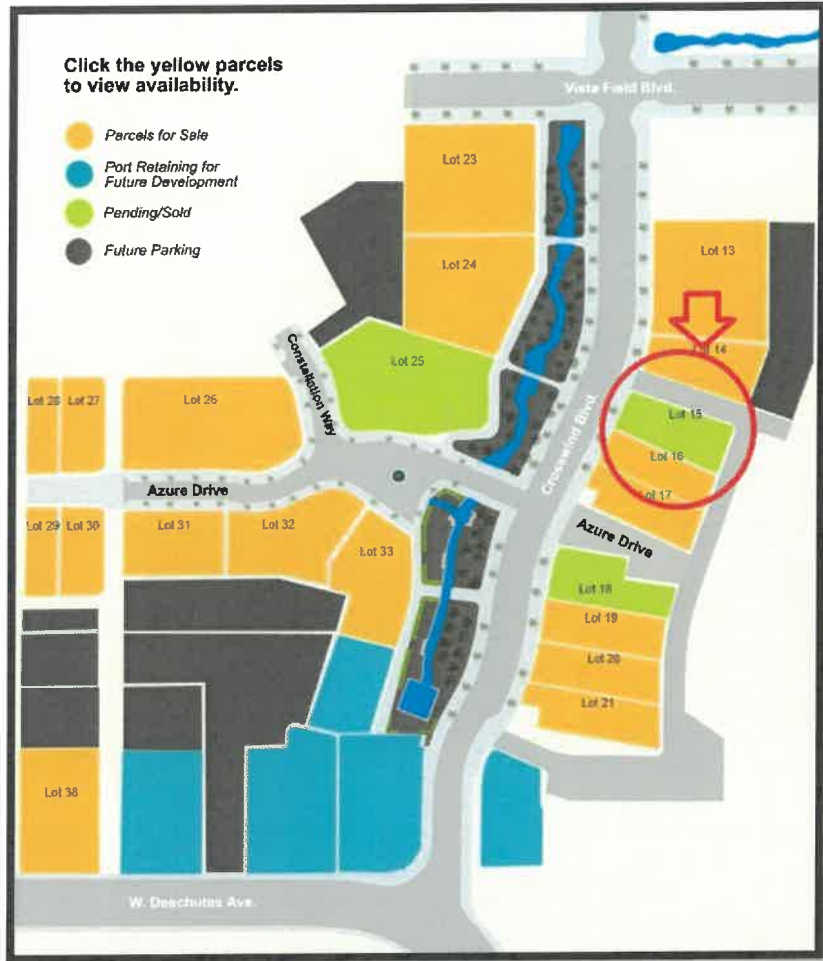


EXHIBIT A

August 16, 2023

Yoori Nah
arasushigrill@gmail.com

Location: 697 Crosswind Blvd in Kennewick WA 99336.
Lot #15.

Legal name: Yoori Nah

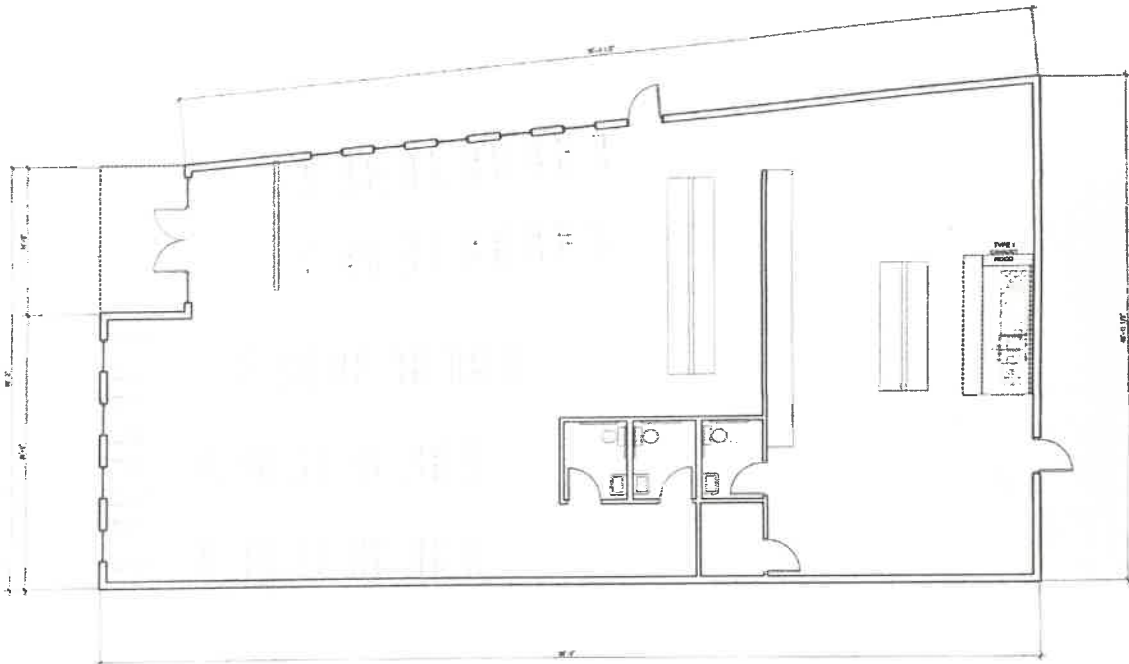
Total offer price: Use: \$95,000 (est.)

Time: Japanese Restaurant

Payment: The construction is planned to be completed in 2-3 years

Closing Date: Size of building: 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:

| Seller | Purchaser |
|----------------------------|----------------------------|
| 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

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 3rd 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 _____

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:
Taudd 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)



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

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.

Vista Field Southern Gateway Project Update















EXHIBIT B



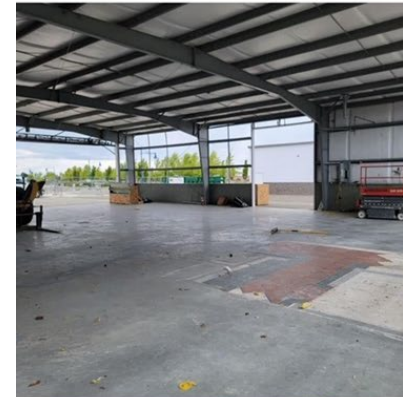
Port of Kennewick

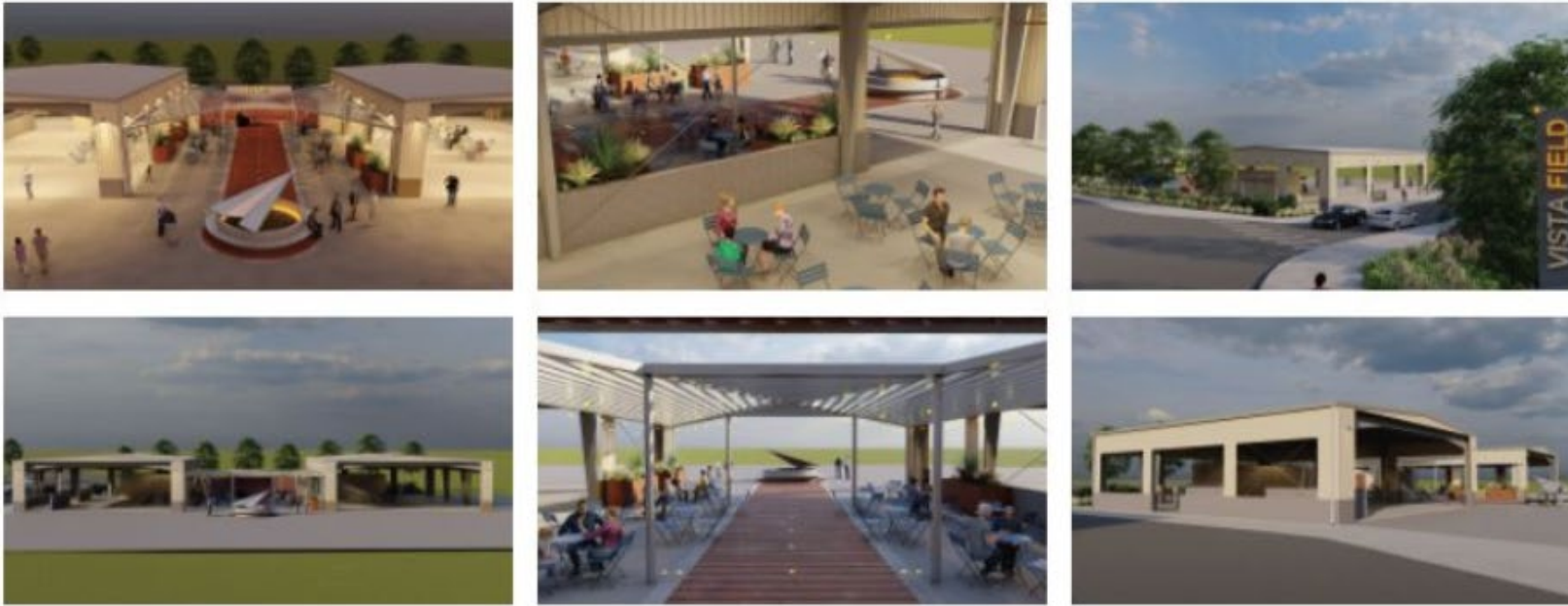
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... EXHIBIT B

Vista Field's Southern Gateway Transformation project is underway. Walls are coming down to transform two airplane hangars into community gathering spaces.

Port of Kennewick contracted with Goodman & Mehlenbacher Enterprises (GAME Inc.) to remove metal siding from two former airplane hangars and construct pergolas, storage areas, sound walls and restrooms. The project also includes installing lighting, industrial fans, landscaping, a new crosswalk, wayfinding signage, a "paper airplane" metal sculpture and an artistic reuse of authentic metal carrier-decking artifacts to highlight Vista Field's ties to WWII Naval history. The \$2.137 million economic development and vibrancy project, funded by a grant from Benton County, WA Government Rural County Capital Fund, is expected to be completed winter 2024.





Vista Field Southern Gateway Transformation Project

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RCO Local Parks Maintenance Grant

\$82,375

Projects/Progress



A Destination Waterfront

Port of Kennerick

(Above) Before photos of the shoreline showing the degraded habitat. (Below) More than 8,000 tons of rock, 10,000 tons of dirt, 1,800 tons of topsoil, and nearly 7,000 plants were used to complete the habitat enhancements. (Far right) The Clover Island River Walk showcases the habitat and recreation improvements.

The 16-acre Clover Island visible today, was created by placing carbon fill on the highest part of the original 162-acre island before McNary Dam was built in 1953. Over the years, erosion and the habitat was further degraded. The resulting shoreline was linear, simple, and sterile.

The Port of Kennerick, which owns Clover Island, determined thriving fish and wildlife communities were a desirable urban amenity. In 2010, the port began construction to restore shoreline habitat and expand public access to the Columbia River.

The island's riverbank was reshaped to provide a shallower, more complex shoreline configuration, and the concrete curbs, where salmon predators could lurk, were removed. Vegetation was added to provide shade, leaf litter, and insects to fish eat. The island's western country (to save a spatially complex, organic, living shoreline).

The Clover Island River Walk was added to connect the island with historic Astoria's Kennerick and offer a place to enjoy the Columbia River waterfront.

Challenge: In this area, the Columbia shoreline is defined by rip-rap levees. View these before and after photos, then look around at the rip-rap levees on both sides of the river. Can you see how this section of Clover Island shoreline was improved for habitat and recreational use?

This project was funded in partnership with the Washington County Land Use Department, Oregon Department of Natural Resources, and the National Fish and Wildlife Foundation. For more information, visit www.portofkennerick.com.

Handwritten graffiti: "K234H" and "CHUNK"

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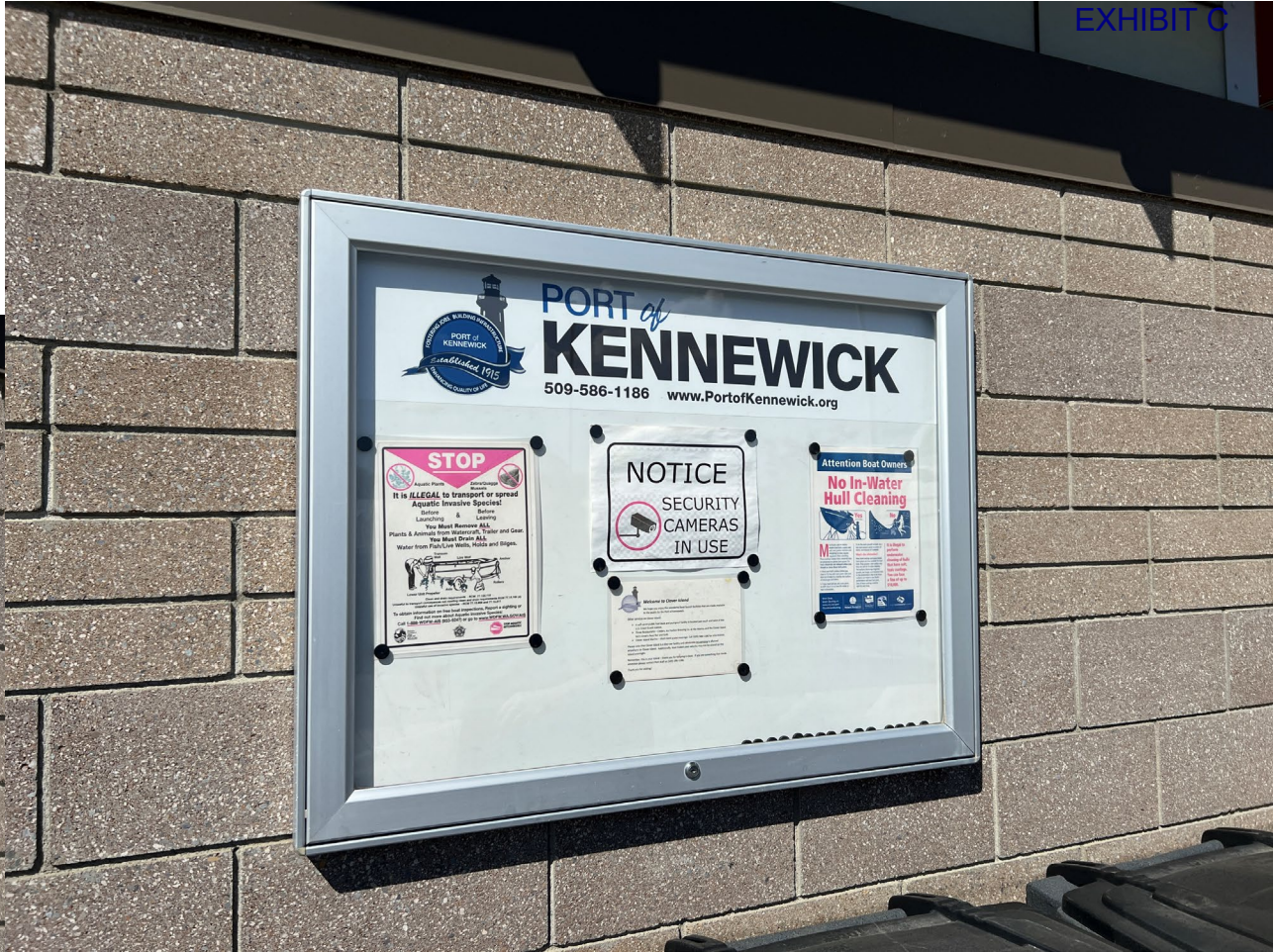


EXHIBIT C





EXHIBIT C





EXHIBIT C















EXHIBIT C



Vista Field Development Proposal Collaborative Design Process Review

Date: June 11, 2024
To: Port Commission
From: Tim Arntzen, CEO

I. PROJECT PROPOSAL:

- Vista Field - Single Family Residential
- Approximately 300 residential units constructed over multiple phases.

II. INITIAL PROJECT REVIEW:

I have reviewed the proposed project as described in the Letter of Intent (LOI) submitted by Levi Holmes of Chartwell Land Company and Ben Paulus of Blue Fern Development, hereafter referred to as the "Developer." The Developer's LOI dated April 10, 2024, is more completely described in attached as Exhibit "A."

Briefly stated, the project contemplates approximately 300 single family homes constructed over multiple phases throughout Vista Field. Initially, residential construction will begin with the four existing single family detached shovel-ready parcels in Vista Field Phase I and extend west. The Developer proposes to build the first neighborhood of approximately 28 homes within walking distance of existing port amenities namely the linear water feature, fountains, bosque of trees, pedestrian bridges, and the southern gateway pavilion spaces. The maps and drawings attached as Exhibit "B" will assist in project evaluation.

The Developer proposes to create a Design Library with a variety of new urbanism and traditional single family residential designs for attached, detached, row houses and townhomes.

After consultation with Amber Hanchette, Director of Real Estate and Larry Peterson, Director of Planning, and pursuant to steps set out in the Collaborative Design Process (as formally adopted by the Port Commission), I have concluded that the project, on its face, meets the basic criteria of the CDP.

DPZ is pleased to see the placemaking emerging from Port of Kennewick's endeavors at Vista Field.

The Port's investment in the streets, linear park, waterway, and retail plaza have set the stage for a variety of live, work, and play spaces.

In short, the LOI demonstrates a likelihood that the:

- (1) Development concept is “likely” to assist with redevelopment of Vista Field;
- (2) Developer is also a Builder who possesses the relevant experience in constructing quality projects like those set forth below. Builder biography attached.
- (3) Price and terms appear to be reasonable.

Below is a summary discussion related to the above criteria:

Real Estate:

- ✓ That the Developer generally followed the port’s proposal submission process by providing a letter of intent and answers to the basic Proposal Checklist questions;
- ✓ The Developer, Levi Holmes, is the owner of Chartwell Land Company of Silverdale Washington;
- ✓ The Developer, Ben Paulus, is the owner of Blue Fern and Teak Construction in Redmond Washington;
- ✓ In each request for information, they have been responsive and accommodating;
- ✓ Port staff were able to meet on numerous occasions with the Developer’s team and offered guidance in the proposal development process; and
- ✓ Port staff was able to visit an existing residential development constructed by the Developer in Duvall, Washington.

About the Developers:

Chartwell Land Company / Levi Holmes

The principals of Chartwell Land Company have designed, entitled, and/or built over 2,000 residential units. Most of their experience has been entitling projects for production home builders.

Chartwell Land Company has been following the New Urbanist movement and Traditional Neighborhood Design since their first exposure to Seabrook over 16 years ago. Although most of Chartwell Land Company's experience is related to production home building, it is transitioning its primary focus to New Urbanism and Traditional neighborhood Design.

They are a members of the National Town Builders Association and have been working with Qamar and Associates and Stucturas Naturalis (Michael Mahaffy) for the past several years.

Blue Fern Development / Ben Paulus

The Blue Fern team has decades of experience in all aspects of land development and construction – and has closed deals of all types, sizes, and complexity.

Within Washington state, Blue Fern has created projects in dozens of jurisdictions – each with its own needs and preferences. Their deep experience means they can hit the ground running no matter where a project is located and is committed to building strong working relationships as they grow into new markets.

In addition to designing and entitling thousands of units for production home builders, Blue Fern has also built hundreds of single family and multifamily residential units. These include infill townhomes and 4 Star Built Green.

Blue Fern brings a home building and sales division in Teak Construction as well as long-term funding.

Together, the Chartwell and Blue Fern joint venture known as BlueChart Homes commits to building at scale in Vista Field while maintaining the strong vision for a Traditional, Walkable Neighborhood. BlueChart Homes intends to uniquely brand their Vista Field home development with a to be determined name.

Teak Construction Projects:

Duvall Village, Duvall Washington
Arrow Apartment Homes, Lacey Washington
42nd Avenue Townhomes, Seattle Washington
Meridian Townhomes, Shoreline Washington
16th Avenue Townhomes, Seattle Washington
1st Avenue Townhomes, Shoreline Washington
3rd Avenue West Townhomes, Seattle Washington
5th Avenue North Townhomes, Seattle Washington
Kenwood Townhomes, Seattle Washington
53rd Avenue Townhomes and Single-Family Homes, Seattle Washington

Planning:

The BlueChart Homes proposal to construct 300+ single family dwelling units in the Vista Field Redevelopment project mirrors the uses and concepts envisioned during the master planning process.

Levi Holmes has demonstrated an understanding of and commitment to the design and place making elements contained in the master plan.

Surely part of this understanding is rooted in their selection of design guidance professionals Michael Mehaffy and Laurence Qamar; new urbanist ambassadors for decades and the lead DPZ CoDesign representatives for the Port's design charrette & master planning efforts in 2013 & 2014.

BlueChart Homes' focus on placemaking and neighborhood feel doesn't disregard the bottom-line economics of development but rather comes from the perspective... *when new urbanism is correctly executed, value is built and in fact exceeds typical residential development.*

All elements of the BlueChart Homes proposal including the pace are consistent with, if not exactly as contemplated in the master plan....focus on design quality & details, incremental development, understanding the value of compact development yields to the neighborhood and surrounding properties and how all lands mesh together to create a "place."

The Port has the opportunity to engage with a partner to add the crucial single family home ingredient to the Vista Field Redevelopment mix.

CEO DIRECTION TO STAFF:

Based on my review, and in accordance with the CDP, I arranged for the parties to participate in the preliminary collaborative design process. On April 22, 2024, the parties met for the initial CDP project review. Following is a summary of the process.

III. COLLABORATIVE DESIGN PROCESS REVIEW:

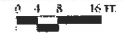
A. Consistency with Master Plan (*summary by Matt Lambert, DPZ CoDesign*)

Complete memo provided as Exhibit "C."

Design Library:



MAY 31, 2024
SCALE: 1/8" = 1 FOOT



HOUSING DEVELOPERS: BLUECHART; LEVI HOLMES AND REN PAULUS

HOUSING DESIGN: QAMAR AND ASSOCIATES INC. AND STRUCTURA NATURALIS INC.

IV. FINANCIAL ANALYSIS:

(Revenue to Port; Port Sale Expenses, Economic Impact; Developer’s Financial Capability).

- A. Revenue to Port / Residential Neighborhood #1: 28 lots at \$80,000 each = \$2,240,000.00
- B. Revenue to Port / Residential Neighborhood #2: 20 lots at \$82,500 each = \$1,650,000.00
- C. Revenue to Port for future phases to be calculated using a mutually agreed upon mechanism outlined in the purchase and sale agreement.

D. Port Sale Expenses:

Proceeds of sale to help offset cost of construction for new roads, alleys, and open spaces to support the single-family residential areas.

E. Developer’s Financial Capabilities:

Letter of reference from lender.

V. LEGAL ANALYSIS:

(Could the proposal subject the port to potential legal issues; does the project place burdens on the port or other purchasers, etc.?)

At first review, proposed project is compliant with the Vista Field master plan in terms of use, location, and site plan. Additional background on Developers to be performed by legal counsel during due diligence period. Details of a purchase and sale agreement with takedown schedule to be developed in 90-day Right to Negotiate period.

VI. CONCLUSION AND RECOMMENDATIONS:

Residential developments are essential to supporting the commercial, retail and hospitality businesses that will be located within Vista Field.

VII. EXHIBITS:

- A: LOI / References / Mutual Intentions Agreement
- B: Site Map / Project Renderings
- C: Vista Field Town Architect Summary



Exhibit A

April 10, 2024

To: Port of Kennewick

From: Benjamin Paulus
BlueChart Homes

Re: **Letter of Intent**
Vista Field

Dear Port of Kennewick Commissioners,

To facilitate the process of reviewing our offers, we have presented our offer below in the form of a Letter of Intent (LOI). This letter serves as notice on behalf of BlueChart Homes (“BlueChart”) of our interest in purchasing the below referenced property and conveys an outline of the business terms and conditions of the proposed purchase that provide the basis for a formal real estate purchase and sale agreement.

Recitals:

The property known as **Vista Field owned by the Port of Kennewick**, is located within the jurisdictional boundaries of the City of Kennewick, Benton County, WA. The Property is approximately **103** Acres in size and is currently zoned under the **Urban Mixed-Use District (UMU)** for a Traditional Neighborhood community which BlueChart believes allows for the development of residential dwelling units that they desire to build.

Bearing this in mind, BlueChart, LLC and/or Assigns (“The Buyer”) is interested in entering into a Purchase and Sale Agreement (‘PSA’) with The Port of Kennewick (The ‘Seller’) as described below.

The following basic terms are proposed by BlueChart:

- 1. Property Address: Vista Field Kennewick, WA**
- 2. Parcel Numbers: TBD**

3. **Purchase Price:** The purchase price shall be as follows:
- a. Phase I: \$80,000 per finished lot
 - b. Phase II: \$82,500 per finished lot
 - c. Phase III-VII: Lot prices shall be determined as follows:
 - i. Recent Sales Data. Based upon Washington State Department of Revenue Real Estate Excise Tax Affidavit forms provided by BlueChart, the port shall select the six highest home sale prices reported to date from the then-current phase.
 - ii. Average Price. After discarding the highest sales price, the Port shall average the gross sales price of the remaining five lots.
 - iii. Lot Price Determination. Unless otherwise agreed to by the parties, the price for a lot for the subsequent phase shall be set at twenty percent (20%) of the average gross sales price for the five selected lots. Additional factors may be considered: economic conditions and infrastructure development costs.

4. **Closing Date:**

- a. Lots to be delivered to BlueChart by Port on a finished lot basis. Definition of the "Finished Lots" shall be agreed upon between BlueChart and The Port during the feasibility period.
- b. Lots shall be fee simple.
- c. BlueChart to purchase lots on a phased schedule as follows (see Exhibit 1)
 - i. **Phase I:** Within 30 days of the lots being finished, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase 1 shall be based on a minimum of 24 lots. Phase I includes 4 existing finished lots.
 - ii. **Phase II:** Within 30 days of the Phase II lots being finished or closing on all lots within Phase I, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase II shall be based on a minimum of 20 lots.
 - iii. **Phase III:** Within 30 days of the Phase III lots being finished or closing on all lots within Phase II, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase III shall be based on a minimum of 39 lots.
 - iv. **Phase IV:** Within 30 days of the Phase IV lots being finished or closing on all lots within Phase III, whichever is

- later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase IV shall be based on a minimum of 29 lots.
- v. **Phase V:** Within 30 days of the Phase V lots being finished or closing on all lots within Phase IV, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase V shall be based on a minimum of 36 lots.
 - vi. **Phase VI:** Within 30 days of the Phase VI lots being finished or closing on all lots within Phase V, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase VI shall be based on a minimum of 40 lots.
 - vii. **Phase VII:** Within 30 days of the Phase VII lots being finished or closing on all lots within Phase VI, whichever is later, BlueChart shall close on 4 lots and continue to close on 4 lots every 2 months until all lots have been purchased. The total Purchase price for Phase VII shall be based on a minimum of 30 lots.
 - viii. BlueChart shall have the option to increase the minimum lots purchased with notice to The Port. The accelerated take down schedule shall be agreed to during the feasibility period.
- d. The Port shall identify amenities to support each phase. During the feasibility and mutual design process, the parties shall agree on the specifics of each amenity. Additionally, the Port shall allocate a portion of the Purchase Price of each Phase for Amenities. The parties shall mutually agree on how those funds are allocated.
 - e. The Port shall commit to activating undeveloped portions of Vista Field for temporary amenities (i.e. pickleball courts on the runway, trails, connection to offsite amenities such as Summer's Hub). The specifics of these temporary amenities shall be agreed to during the feasibility period.
 - f. It is fundamental to BlueChart's business model to not stop building once it has started. Therefore, it is critical that the Port continue to develop lots ahead of each current phase. The Port must deliver the next phase of lots within 12 months of delivery of the next phase deposit. If for any reason the Port is unable to deliver the lots on this schedule, then BlueChart shall have the option to either terminate the contract and receive a return of the earnest money or continue with the contract and receive a 20% discount on the purchase price for the lots in the delayed phase.

5. Collaborative Design Process:

- a. BlueChart will build a design library with a minimum of 12 home types and 36 variations across the project within the design criteria set forth for the project. These homes will be submitted to the Town Architect for approval.

6. Feasibility Period:

- a. **120 days** from mutual execution and delivery of the Purchase and Sale Agreement.

7. Earnest Money:

- a. **\$250,000 Note at Mutual Acceptance which shall be converted to non-refundable cash** within three business days of Feasibility Period Waiver. Said earnest money shall be fully applicable to the closing of Phase I
- b. Additional Earnest Money Deposits per Phase
 - i. 12 months prior to the last take down in a phase, BlueChart shall deposit an additional \$250,000 for the next phase. Upon receipt of said deposit, The Port shall begin developing the next phase and deliver the finished lots no later than 12 months after receipt.
 - ii. BlueChart may make the next phase deposit early. In the event of early deposit, the Port shall begin the improvements early and deliver the finished lots no later than 12 months after receipt.

8. Additional Terms:

- a. As long as BlueChart performs on its lot take down schedule, The Port agrees not to create, market, or sell any For-Sale single family residential lots until after BlueChart has closed on Phase V.
- b. BlueChart shall have a First Right of Refusal for any additional For-Sale single family residential lots in Vista Field

9. Title and Escrow: Benton Franklin Title Company

10. Real Estate Commissions: BlueChart is not using a real estate agent in this Purchase transaction and no commissions are expected

11. Assignment: Something we are very proud of is that BlueChart constructs its own projects in-house. With this in mind, any assignments would be limited to entities in which the Buyer retains a 50% or more interest.

BUYER:

BlueChart Homes, LLC

18300 Redmond Way Ste. 120

Redmond, Washington 98052

DocuSigned by:

C45E3A8EB8DD438...

Date of Execution: 6/3/2024

By: Benjamin Paulus
President

Northwest Bank

June 7, 2024

To Whom It May Concern:

Northwest Bank has worked with Blue Fern Development, Ben Paulus, and related development companies since 2011. In that time we have financed the construction of hundreds of homes and hundreds of acres of land development. Further, we have witnessed the financial success of projects where Blue Fern has partnered with Levi Holmes at Chartwell over the past several years.

Blue Fern has entitled and built (through their in-house contractor, Teak Construction) hundreds of homes in the Pacific Northwest. Both Blue Fern and Chartwell have entitled over 2,000 lots with more than 3,000 additional lots in their current pipeline. At 48 lots and a closing price of \$3,900,000 it is with a high degree of confidence that I can say that Blue Fern and partners would have both financial and operational capacity to execute on the Vista Fields project in Kennewick and continue to have excess capacity.

Please feel free to contact me via email or phone to discuss.

Sincerely,



Erik Pray
Senior Vice President
erik.pray@gmail.com
208-332-0722

VISTA FIELD REDEVELOPMENT

Blue Chart Homes





K1 Elevation

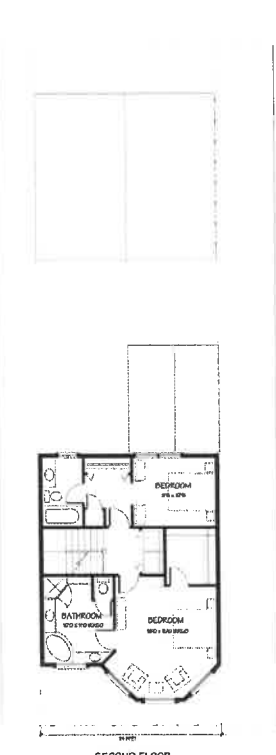
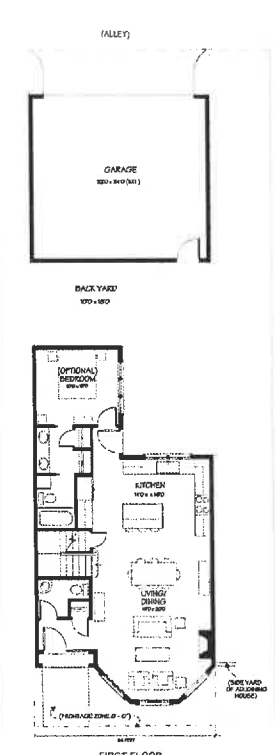
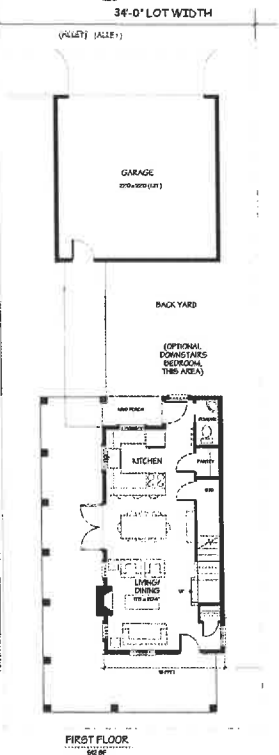
K3 Elevation

J3 Elevation 1

J3 Elevation 2

J3 Elevation 3

J3 Elevation 4



K1 3 BEDROOM, 2.5 BATH, 1,892 SF
 FITS ON 40' WIDE LOT (ZERO LOT LINE, ONE SIDE)

K3 2 BEDROOM, 2.5 BATH, 1,056 SF
 FITS ON 36' WIDE LOT WITH MIN. 5' SETBACK
 (OR 30' LOT WITH ZERO LOT LINE)

J3 3 BEDROOM, 3.5 BATH, 1,512 SF
 FITS ON 24' X 100' LOT (ZERO LOT LINE)

SCALE: 1/8" = 1 FOOT



EXHIBIT C

VISTA FIELD, SINGLE FAMILY RESIDENTIAL

Dear Commissioners,

DPZ is very excited at the opportunity to work with BlueChart Homes on a significant portion of Vista Field's residential areas. Their approach and initial design concepts are in line with the overall vision and the design guidelines, as well as the original intent for Vista Field's woonerfs.

We want to see an organic, picturesque, and beautiful place for residents that creates a truly unique model of living that is adapted to the climate of Kennewick and resilient for the long term.

BlueChart Home's approach achieves all of these goals, and we are confident that they will be able to deliver exactly the type of environment envisioned for Vista Field.

Additionally, their partnership as collaborators considering what it will be like to live in Vista Field will bring value to the project overall. Both as designers of the original vision and as town architects, DPZ wishes to share our strong support for this proposal and desire to collaborate with BlueChart Homes.

Sincerely Yours,

Matthew Lambert, Partner, DPZ CoDesign



ABOUT TEAK

Teak Construction, LLC (“Teak”) is a general contractor based out of Washington state. Teak has been in operation since 2013 and is currently building 269 units throughout the Pacific Northwest. Historically, project sizes have ranged from 3-unit townhome projects to 144-unit apartment projects.

Teak’s staff consists primarily of site superintendents and support staff. Teak does not self-perform any of the construction work. Teak field personnel are responsible for managing and coordinating with the Company’s various subcontractors through project completion. In addition to their field team, Teak has office administrative support in purchasing and accounting.





MANAGEMENT TEAM

BENJAMIN PAULUS
CHIEF EXECUTIVE OFFICER



Ben is a third-generation homebuilder, his family having started Polygon Homes operations in Vancouver, Seattle, and Orange County. He has worked in the industry for 17 years. Benjamin attended St. Georges School in Vancouver, BC then Claremont McKenna College for university where he received his degrees in finance and economics. During college Benjamin worked for Frontier Enterprises, a top 100 homebuilder based in California's inland empire. After graduating Benjamin worked for Polygon Development as an analyst underwriting masterplan joint ventures before leaving on his own to start Blue Fern and Teak Construction. Currently, Ben oversees a mix of residential for-sale infill, plat development and multi-family projects.

MAX CHAPPRON
CHIEF FINANCIAL OFFICER



Max joined Teak in 2017. Prior to this, he spent two years as the Controller at a large Puget Sound based homebuilder and real estate developer where he was responsible for managing and overseeing the accounting and finance teams. Before working in private industry, he spent 10 years at a large regional public accounting firm working in their assurance group where he served clients in the construction, real estate, and consumer products sectors. Throughout his career in private industry, he has successfully negotiated and executed over \$300MM in financing agreements on various types of real estate development projects. At Teak, his daily responsibilities include managing the finance, accounting, insurance, and legal functions of the business. He also works with the acquisitions team in underwriting and evaluating sites for future development. Max is a licensed Certified Public Accountant in the State of Washington.

MICHELLE BRANLEY
CHIEF OPERATING OFFICER



As COO, Michelle is responsible for the day-to-day operations of Teak Construction including leadership of the construction team, sales staff, and all sub-contractors. In her role, she also leads and oversees human resources, marketing and the project management technologies. Over the past five years, Michelle has overseen the management of all Teak Construction project sites from pre-construction planning, construction, safety, and quality control, through to turnover to owners. Prior to joining Teak, Michelle spent more than 20 years in the residential mortgage industry including 15 years at Wells Fargo Home Mortgage where she led and developed talent at processing centers across the Pacific Northwest.



MANAGEMENT TEAM

JOEL NAEGELE
PURCHASING MANAGER



Joel joined Teak in 2018. Prior to joining Teak, he spent 15 years as the Purchasing and Project Manager at a long-established homebuilding and real estate developer in the Puget Sound area where he was responsible for the buyout and subcontractor team construction for large and small single family and multifamily developments. Throughout his career, he has successfully developed a subcontractor and vendor group throughout the region to establish professional and respectful relationships that continue to be a benefit to Teak on their current and future projects. At Teak, his daily responsibilities include budgeting, cost analysis, competitive market bidding, and working with the on-site managers, subcontractor team, and owners to provide a consistent, quality, and cost-effective product for the market.

ZACK DIXON
CONSTRUCTION MANAGER



Zack joined Teak in 2016. Prior to joining Teak, Zack spent years working in the trades and the custom home building industry. Throughout his career, he has gained extensive knowledge of all aspects of the construction process, most notably, framing, electrical, finish carpentry, construction safety, and scheduling. As the Construction Manager, Zack assumes a critical, hands-on role in overseeing all projects and field staff. His daily responsibilities include leading field operations, schedules, safety, QA/QC, warranty, and project turnover. He works closely with the project superintendents, subcontractor team, and the owner to deliver a high-quality product on time, and within budget, that the Teak team and the owner can be proud of.

Mutual Intentions Agreement

AGREEMENT RELATING TO POTENTIAL TRANSACTION

Form Date: March 28, 2024

This Agreement confirms the mutual intentions of the Port of Kennewick, through its staff (“Port”) and the undersigned on behalf of its heirs, successors, assigns and business associates (the Undersigned) and its affiliates (“Undersigned”) (collectively “Parties”) with respect to the potential transaction described below (the “Potential Transaction”):

General Understanding of the Parties:

1. Discussions between the Parties are to explore the viability of the Potential Transaction and shall not create an obligation on either party to take or refrain from any action.

2. The Port may, in its discretion, arrange for further action including but not limited to introducing the Undersigned’s concept to the Port’s Commission or appropriate third parties for the purpose of gathering information and analyzing feasibility and cost. The Parties understand that complete confidentiality cannot be guaranteed.

3. Except as specifically set forth above, neither party shall publicly communicate information related to the Potential Transaction, until the Potential Transaction is presented to the Port Commission in a public commission meeting.

4. A binding obligation shall only be created by a written agreement setting forth all material terms and conditions of the Potential Transaction, signed by the authorized representatives of the Parties; no binding agreement shall be effective except upon the affirmative vote by a majority of the Port Commission in a public commission meeting.

5. Each party shall be responsible for all costs it incurs with respect to the Potential Transaction, including but not limited to professional and attorney’s fees and costs. Neither party shall be responsible for any damages, whatsoever, directly or incident to this matter.

6. The Port makes no representations with respect to the Potential Transaction and the Undersigned agrees to exercise all due diligence it deems necessary.

7. At such time that the Undersigned has submitted to the Port a Letter of Intent (“LOI”) describing its Vista Field development proposal, the Undersigned further acknowledges and agrees as follows:

- a. With respect to the Port’s evaluation of and potential action on the LOI, the Undersigned authorizes the Port (and its duly authorized representatives) to:
 - i. access relevant records of the Undersigned (“Records”) to evaluate the merits of the LOI and the Undersigned’s ability to perform as described in its LOI;
 - ii. rely on the Records provided; and
 - iii. disseminate and discuss the Records in public and non-public private settings.
 - iv. The Records may be subject to public disclosure pursuant to RCW Chapter 42.56, the Washington Public Records Act (“PRA”), provided however, in

such case, the Port will provide prompt written notice (the "Notice") to the Undersigned of the request for information and the contact information of the requestor at least ten (10) days prior to any Records disclosure, so that the Undersigned may seek protective orders or other appropriate remedies and/or waive compliance with the provisions of the PRA and this Agreement. Unless such protective orders are obtained and provided to the Port, the Port will release to the public the requested information to the extent required by, and in compliance with, the Washington PRA; provided to the extent that any portions of Undersigned's Records are exempt from disclosure under the Washington PRA as determined by a Court, those portions will be redacted.

8. The Undersigned releases the Port and its duly authorized representatives from liability for any damages which may arise related to the use, dissemination, and discussion of the Records.

9. This Agreement is effective until the construction project contemplated by either the Potential Transaction or LOI is fully completed; provided the herein above Paragraph 8. "Release" shall survive expiration and or termination of this Agreement and the terms of this Agreement shall survive any closing that may result from the Potential Transaction or LOI.

DocuSigned by:
Levi Holmes
Undersigned

6/3/2024
Date

Levi Holmes
PRINT NAME

BlueChart LLC
PRINT COMPANY

Undersigned

Date

PRINT NAME

PRINT COMPANY

DocuSigned by:
Vincent Amstutz
Port of Kennebec

6/3/2024
Date

PORT OF KENNEWICK

RESOLUTION No. 2024-10

***A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK TO
APPROVE A 90 DAY RIGHT TO NEGOTIATE PERIOD
WITH BLUECHART 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 has received a proposal from Levi Holmes and Ben Paulus of BlueChart LLC for construction of approximately 300 single family residential units throughout multiple phases of the port’s Vista Field redevelopment project; and

WHEREAS, the proposal has received preliminary staff, legal and design review related to the Vista Field Master Plan and Collaborative Design Process.

NOW, THEREFORE, BE IT RESOLVED that the Port of Kennewick Board of Commissioners hereby approves a ‘90 Day Right to Negotiate’ time-period with BlueChart LLC for construction of 300 single family residential homes within Vista Field.

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 11th day of June, 2024.

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

By: _____

SKIP NOVAKOVICH, President

By: _____

KENNETH HOHENBERG, Vice President

By: _____

THOMAS MOAK, Secretary

MOTION TO APPROVE:

I move approval of Resolution 2024-10 approving a 90-Day Right to Negotiate with BlueChart Homes for the development of single-family homes 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.

MOTION TO APPROVE WITH CONDITIONS:

I move approval of Resolution 2024-10 authorizing a 90-Day Right to Negotiate time-period with BlueChart Homes for the development of single family homes in the port's Vista Field development project; **And, I direct the CEO to address the following matters (if any):**

1. _____
2. _____
3. _____

MOTION TO DENY:

I move to approve Resolution 2024-10 rejecting a 90-Day Right to Negotiate time-period with BlueChart Homes for the development of single family homes in the port's Vista Field development project development for the following reason: _____

AGENDA REPORT

TO: Port of Kennewick Commission

FROM: The CEO Evaluation Committee:
Port Commissioner Ken Hohenberg,
Port Deputy CEO & Chief Financial Officer Nick Kooiker and
Port General Legal Counsel Carolyn Lake

MEETING DATE: June 11, 2024

AGENDA ITEM: Action by Commission: Motion to Approve Resolution 2024-11 and its Exhibit A, Approving Committee's Recommended Update to CEO Goals to Address Flexible Goal # 10

I. REFERENCE(S): Resolution 2023-29 and Exhibit A, adopted October 24, 2023, Commission Approval of CEO's Goals & Objectives

Proposed Resolution 2024-11

II. FISCAL IMPACT: None

III. DISCUSSION:

The Port Commission oversees the annual evaluation of the Port's Chief Executive Officer's ("CEO") performance pursuant to the CEO's Employment Agreement, and pursuant to Resolution 2022-19, by which the Commission authorized a CEO Evaluation Committee.

The CEO Evaluation Committee is made up of the Port's Chief Financial Officer, Port Attorney, and one Commissioner to serve a 2-year term. The current CEO Evaluation Committee consists of Port Commissioner Ken Hohenberg, Port Chief Financial Officer Nick Kooiker and Port General Legal Counsel Carolyn Lake.

One duty of the Evaluation Committee is to recommend, for Commission approval, annual CEO Goals. The Commission last updated the Port CEO Goals on October 24, 2023. Goal #10 of the 2023-2024 CEO Goal was a flexible Goal, whereby CEO is to "Identify and present one additionally beneficial project or ROI partnering opportunity to commissioners."

IV. COMMITTEE RECOMMENDATION:

The CEO Evaluation Committee recommends that the Commission approve the proposed goal in fulfillment of the Flexible Goal #10, which is to initiate and advise Commission of a succession plan for the continuity of Port leadership and staff.

V. ACTION REQUESTED OF COMMISSION:

I move that the Commission approve the proposed goal in fulfillment of the Flexible Goal #10, which is “To initiate and advise Commission of a succession plan for the continuity of Port leadership and staff”.

-OR-

Other: _____.

PORT OF KENNEWICK

Resolution No. 2023-29

**A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS FORMALIZING COMPLETION OF
VARIOUS 2021/22 AND 2023/24 GOALS & OBJECTIVES**

WHEREAS, the Commission approved goals and objectives for the Port CEO, attached as Exhibit “A” on November 8, 2022; and

WHEREAS, the algae remediation at Duffy’s Pond has been completed, along with other tenant improvements at Columbia Drive; and

WHEREAS, a MOU was presented to the City of Kennewick in relation to the Vista Field Project; and

WHEREAS, the Port CEO has implemented hybrid meetings and work protocols, with the installation of cameras in the commission chambers; and

WHEREAS, an agreement was reached with TRIDEC on March 16, 2023 related to increased marketing efforts at Vista Field; and

WHEREAS, the Commission desires to formally accept as complete Goal #5 of the CEO’s 2021/22 Goals and Objectives; and

WHEREAS, the Commission desires to formally accept as complete Goals #6, #8, and #9 of the CEO’s 2023/24 Goals and Objectives.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby accepts as complete Goal #5 of the CEO’s 2021/22 Goals and Objectives, and Goals #6, #8, and #9 of the CEO’s 2023/24 Goals and Objectives.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 24th day of October 2023.

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

By: DocuSigned by:
Skip Novakovich
0E53A30E1C8E442...
SKIP NOVAKOVICH, *President*

By: DocuSigned by:
Kenneth Hohenberg
89F77EAC8921416...
KENNETH HOHENBERG, *Vice President*

By: DocuSigned by:
Thomas Moak
A35176A2D2CD413...
THOMAS MOAK, *Secretary*

Exhibit "A"

| <i>EXHIBIT A</i> | | CEO 2023/24 Goals & Objectives (including update on 2019/20/21/22 ongoing goals) | | | |
|--|-------------------|--|---|--|---|
| <i>DATE:</i> | | October 24, 2023 | | | |
| <i>GOAL & OBJECTIVE</i> | | <i>TACTICAL STEPS</i> | <i>ACTION</i> | <i>STATUS</i> (checkmark = Completed) | <i>COMMENTS</i> |
| <i>2019/2020 Goals and Objectives Carryover</i> | | | | | |
| Vista Field | 2019/20 GOAL 2 | Sell one parcel or obtain one ground lease (does not include Arts Center Task Force). | Considered complete when presented to Commission. | 50% Complete | The Port is advertising lots for sale. Various Letters of Intent's have been received; and one has been accepted by the Commission. |
| <i>2021/2022 Goals and Objectives Carryover</i> | | | | | |
| Kennewick Waterfront | 2021/22 GOAL 5 | Implement the identified Duffy's Pond tenant-improvements and algae mitigation plan. | Considered complete when presented to Commission. | 100% Complete | Algae remediation for Duffy's Pond has been implemented, bathroom constructed and art wrap completed. Demonstration vineyard with Palencia completed. Standing bar installed on tasting room patios completed. Wayfinding signage completed. Food truck plaza fencing was bid (pulled project due to escalating material costs). |
| <i>2023/2024 Goals and Objectives</i> | | | | | |
| Vista Field | 2023/24 GOAL 1 | Complete A&E for Vista Field Parking Lots | Considered complete when presented to Commission. | 50% Complete | Praking lots have been identified and the layout was amended due to submitted LOI's. Parametrix is on contract for A&E. Anticipate cost estimates by late fall. |
| Vista Field | 2023/24 GOAL 2 | Complete Vista Field Development building exterior improvements | Considered complete when presented to Commission. | 15% Complete | Meier Architecture is on contract and has completed the design concept drawings. |
| Kennewick Waterfront | 2023/24 GOAL 3 | Prepare and market one clover island lot for lease. | Considered complete when presented to Commission. | 25% Complete | North Shoreline improvements have been completed to enable marketing efforts. East end of island will be completed by Corps of Engineers |
| Kennewick Waterfront | 2023/24 GOAL 4 | Complete A&E and cost estimate for clover island stage project and assess opportunities for public private partnership. | Considered complete when presented to Commission. | 80% Complete | Stage has been purchased. Negotiating stage lease agreement. Estimated delivery date for stage is February 2024. Hired Hall Engineering for foundation engineering, and engineering to commence after final concert of the 2023 season (late September). |
| Kennewick Waterfront | 2023/24 GOAL 5 | Market for sale, and sell or lease one lot in the Kennewick waterfront area which includes willows, cable greens, and columbia drive | Considered complete when presented to Commission. | Work in Process | Work in Progress |

Exhibit "A"

| GOAL & OBJECTIVE | | TACTICAL STEPS | ACTION | STATUS (checkmark = Completed) | COMMENTS |
|----------------------------------|--------------------|---|---|-----------------------------------|---|
| Kennewick Waterfront/Vista Field | 2023/24 GOAL 6 | Pursue interlocal agreement (or MOU) with City of Kennewick related to city of Kennewick-allocated RCCF funds to be used to benefit projects located within the City in Vista Field or Columbia Drive | Considered complete when presented to Commission. | 100% Complete | Worked with City Manager for eight months on MOU. Presented MOU and accepted by Port Commission. Voted on and rejected by City Council. |
| District wide | 2023/24 GOAL 7 | Carry out joint meeting with one jurisdictional partner (remote) | Considered complete when presented to Commission. | Work in Process | Work in Progress |
| District wide | 2023/24 GOAL 8 | Present options for hybrid meeting and work protocols that promotes continued staff and port productivity | Considered complete when presented to Commission. | 100% Complete | Camera installation completed in October 2023. |
| District wide | 2023/24 GOAL 9 | Identify and present to commission joint Tridec project of benefit to the Port | Considered complete when presented to Commission. | 100% Complete | Agreement with TRIDEC re: Vista Field opportunities |
| District wide | 2023/24 GOAL 10 | Flexible Goal: Identify and present one additionally beneficial project or ROI partnering opportunity to commissioners. | Considered complete when presented to Commission. | Work in Process | Ideas: Find solution for tenuous IT' situtation. Find solution for Temporary Workers Art Project Vista Field - Day Break Commons Sales office at Vista Field |

PORT OF KENNEWICK

Resolution No. 2024-11

**A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS UPDATING THE PORT'S
CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

WHEREAS, the Commission last approved goals and objectives for the Port Chief Executive Officer (“CEO”) on October 24, 2023, as shown on the attached **Exhibit A**; and

WHEREAS, Goal #10 of the 2023-2024 CEO’s Goal was a flexible Goal, whereby the Port CEO is to “Identify and present one additionally beneficial project or ROI partnering opportunity to commissioners.”; and

WHEREAS, the Port CEO has identified a proposed goal in fulfillment of the Flexible Goal #10, which is to initiate and advise the Commission of a succession plan for the continuity of Port leadership; and

WHEREAS, the Evaluation Committee reviewed and recommends adoption of the proposed goal as the Flexible Goal #10, which is to initiate and advise the Commission of a succession plan for the continuity of Port leadership and staff; and

WHEREAS, the Commission desires to formally accept the proposed goal as the Flexible Goal #10.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby accepts the proposed goal in fulfillment of the Flexible Goal #10, which is: “To initiate and advise the Commission of a succession plan for the continuity of Port leadership and staff”.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 11th day of June 2024.

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

By: _____

SKIP NOVAKOVICH, *President*

By: _____

KENNETH HOHENBERG, *Vice President*

By: _____

THOMAS MOAK, *Secretary*