

To continue to provide public access to meetings, Port of Kennewick will provide telephonic, video access, and in-person participation options to the public.

The telephonic and video access information will be provided on the Official Agenda.

## **DRAFT AGENDA**

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

September 24, 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 September 17, 2024
  - B. Approval of Warrant Register Dated September 24, 2024
  - C. Approval of Regular Commission Meeting Minutes September 10, 2024
- VI. NEW BUSINESS**
  - A. 2025 Hotel Concert Logistics (TIM)
- VII. ACTION ITEMS**
  - A. Vista Field Lot #18 Purchase and Sale Agreement - Blueberry Bridal Boutique LLC; Resolution 2024-18 (AMBER)
  - B. Vista Field Lot #31 Purchase and Sale Agreement – Cantley Vision Inc, PS; Resolution 2024-19 (AMBER)
  - C. Bid Award: Vista Field Development Facilities (VFDF) A & B (415 N. Roosevelt); Resolution 2024-20 (AMBER)
- VIII. PRESENTATION**
  - A. 2025-2026 Draft Work Plan (LARRY)
- IX. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Vista Field
    - 1. Southern Gateway Project Update (LARRY)
    - 2. FBO Building Demo (DAVID)
  - B. CEO Report (if needed) (TIM)
  - C. Commission Meetings (formal and informal meetings with groups or individuals)
  - D. Non-Scheduled Items  
(LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/MICHAEL/DAVID/CAROLYN/TIM/KEN/TOM/SKIP)
- X. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- XI. ADJOURNMENT**

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



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**SEPTEMBER 10, 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  
Thomas Moak, Secretary

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

## **PLEDGE OF ALLEGIANCE**

Commissioner Hohenberg led the Pledge of Allegiance.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

- A. Approval of Direct Deposit and E-Payments Dated August 31, 2024**  
Direct Deposit and E-Payments totaling \$110,065.59
- B. Approval of Warrant Register Dated September 10, 2024**  
Expense Fund Voucher Number 106214 through 106263 for a grand total of \$465,073.26
- C. Approval of Regular Commission Meeting Minutes August 27, 2024**

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

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 10, 2024 MINUTES

**DRAFT**

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## PRESENTATION

### A. *Supreme Court Opinions Update*

Ms. Lake gave a brief update on the recent Supreme Court opinions:

- Repeal of Chevron Doctrine: if federal legislation is ambiguous or leaves an administrative gap, the courts must defer to the regulatory agency's interpretation if the interpretation is reasonable.
- City of Grants Pass Homelessness Enforcement: local government can enforce laws that regulate camping on public property without violating the Eighth Amendment's protection (homelessness enforcement).

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *Kennewick Waterfront*

#### 1. *Kittson Easement*

Mr. Arntzen stated Ms. Lake drafted a Purchase and Sale Agreement (PSA) for the Kittson land exchange in The Willows. Mr. Kittson previously requested access to the back side of the KIE building once the Port constructs the road. Mr. Arntzen met with the Kittsons and reassured them that even though it was not called out in the PSA, Ms. Lake will draft an easement to the property, as long as it is consistent with the PSA.

Ms. Lake stated once the City approves the Boundary Line Adjustment, the Port will issue an easement to the property.

Commissioner and staff discussed the easement, which would be effective once the Port constructs road access. Mr. Arntzen envisions the road to be similar to Vista Field, being slow moving and pedestrian friendly. Commissioner Moak appreciated the explanation.

***It is the Consensus of the Commission to move forward with the Port/Kittson property easement once the BLA has been approved by the City and the road is constructed.***

### B. *2025-2026 Budget and Work Plan Memo*

Mr. Arntzen presented a memo regarding the 2025-2026 budget philosophy which captures Commission comments over the past year (*Exhibit A*) with the primary focus on Vista Field.

Mr. Kooiker stated the budget memo addresses the capital budget and focuses on Vista Field infrastructure. Additionally, the Port will need to maintain some flexibility based on the actual project status.

Commissioner Hohenberg thanked Mr. Kooiker for the briefing and stated none of this information is a surprise as the Commission has confirmed over the past few years that Vista Field is the number one priority.

Commissioner Moak inquired if the Kennewick Waterfront marketing efforts for land sales or leasing will be addressed in the 2025-2026 Budget/Workplan.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 10, 2024 MINUTES

**DRAFT**

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Mr. Arntzen stated that because of limited staff resources and because of the Commission's directive, we have made a concerted effort to focus on Vista Field. Even though we have not discussed the Blue Chart proposal in detail during each Commission meeting, it is being worked on daily—and because of the size and complexity of the project, it is taking the majority of staff time. Mr. Arntzen is optimistic that once the Blue Chart proposal moves forward, staff may be able to work on the Kennewick Waterfront properties. Mr. Arntzen stated he would like staff to have the opportunity to be a reliable partner to the people who purchase lots at Vista Field and be able to continue to assist them after the PSA is executed. Staff continues to market the properties at Columbia Gardens; however, the emphasis is still on Vista Field.

Commissioner Moak thanked Mr. Arntzen for his comments and stated that was what he needed to hear, and it is good for the Commission to understand that. Commissioner Moak stated people inquire about Port projects and staff are following the Commission directive to focus on Vista Field.

Commissioner Novakovich stated the Port has limited resources that we can apply to different projects and the community and Commission directed staff to allocate those resources towards Vista Field. Additionally, Commissioner Novakovich has seen a lot of advertising for the Kennewick Waterfront and believes staff are applying the resources that they have in the most appropriate way and the Commission should support them in that effort.

## **C. *CEO Report***

Mr. Arntzen gave a brief CEO report:

- Port of Kennewick and Port of Pasco Joint Meeting is scheduled for Wednesday, October 9, 2024 at 10:00 a.m. Staff will provide the Commission with a Draft Agenda for comments, which will include waterfront efforts, and Cable Bridge Lighting project update.

Commissioner Hohenberg agrees with Mr. Arntzen's comments and believes we should discuss Vista Field and Osprey Point because of the mixed-use development aspect.

Commissioner Moak is interested in the waterfront development and the Cable Bridge Lighting project and thinks it is important to discuss topics that benefit both Commissions.

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

Commissioners reported on their respective committee meetings.

## **E. *Non-Scheduled Items***

Commissioner Moak recently visited Seabrook, Washington for the first time and enjoyed the development, trees, and landscaping. The development is very exclusive, and they are building new condominiums, townhomes and live-work units in the town center, starting at \$1,995,000.00. Commissioner Moak hopes that Vista Field does not get priced out for most people and that the public uses the amenities. At this time, the Port controls the home and owner's association at Vista Field, but at some point, it will be mostly private and he hopes the public will always feel comfortable at Vista Field. Commissioner Moak stated the Port is starting to develop the housing

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 10, 2024 MINUTES

**DRAFT**

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portion and believes the Tri-Cities will love the designs of Blue Chart. Commissioner Moak hopes as we design Daybreak Commons, it will show that it is for everyone.

Commissioner Moak will remotely attend the September 24, 2024 Commission Meeting.

Commissioner Novakovich thanked Ms. Soctt for her assistance in connecting to today's meeting.

## **PUBLIC COMMENTS**

No comments were made.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 3:07 p.m.

***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Skip Novakovich, President*

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*Kenneth Hohenberg, Vice President*

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*Thomas Moak, Secretary*

## Memorandum

To: Commission  
From: Tim Arntzen, POK CEO; Nick Kooiker, POK CFO  
Date: September 10, 2024  
Re : Budget Notes

Most of the information on the budget document is self-explanatory, or we have discussed it previously. However, a couple items may need further explanation.

1. **General:** About 95% of the proposed capital budget will be for Vista Field projects, based upon decisions that the Commission has made in the past (e.g. Blue Chart, Dulo Foster, Kuki LLC).
2. **Vista Field Infrastructure:** As mentioned above, the capital budget will include various line items for infrastructure and parking projects at Vista Field. The Port team has gone through an arduous process over the last several months preparing an infrastructure plan that is sequenced based upon the development proposals received and approved by the Port Commission. Land sales are projected as part of the budget. However, all of the projects are sequenced with appropriate “triggers” to protect the Port in the case that a transaction doesn’t come to fruition.
3. **2025/26 Mid-Biennial.** Due to so many forecasted variables, the Port Commission may need to maintain some level of flexibility during the 2025/26 budget cycle. Typically, we have performed a mid-biennial budget review. During the process, the Commission may be asked to “shuffle” funding based upon actual project status.

Thank you for this opportunity to comment.

## BUDGET CALENDAR

September 24, 2024: Work Plan Workshop

October 8, 2024: Work Plan Approval

October 22, 2024: 2025/26 Preliminary Budget Workshop

November 12, 2024: Final Budget Approval



## ***Memorandum***

To: Port Commission  
From: Tim Arntzen, POK CEO  
Date: September 24, 2024  
Re: Clover Island Stage, 2025

Gurdeep Bains, a member of the Clover Island Inn ownership group, has contacted me as a matter of courtesy, indicating that the ownership group plans to utilize the services of a local business to host and cater the 2025 concert series.

I have prepared a draft letter from me to the ownership group and the proposed concert series contractor, thanking them for their notice. I also reminded them that the port will continue to honor the written stage agreement which is in effect between the port and the hotel group. This reminds the hotel group that it is still required to abide by the stage agreement, which includes details of stage use, setup, takedown, etc. The stage agreement as well as other related documents are attached to this memo.

As a reminder, the port does not get involved with whom the hotel group contracts for performances, food and beverage service, etc. We did not involve ourselves in this last year, and we will not do so this year. As we have publicly stated before, hotel business management practices are best left to the hotel group, as long as the lease and stage agreement provisions in the existing written documents are adhered to.

With commission consent, I propose forwarding this letter to the above-referenced parties. My intention is to encourage any discussion related to this matter at the commission meeting of September 24<sup>th</sup>.

Thank you.



## **Bridgette Scott**

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**From:** Tim Arntzen  
**Sent:** Monday, September 16, 2024 2:15 PM  
**To:** Bridgette Scott  
**Subject:** FW: update on stage events for next year

For the packet, please. Thank you.

**From:** Gurdeep Zeal Bains <gurdeep.bains@outlook.com>  
**Sent:** Tuesday, September 10, 2024 11:02 AM  
**To:** Tim Arntzen <ta@portofkennewick.org>  
**Subject:** update on stage events for next year

Tim, an update on the stage as I think Dara reached out to you yesterday and we haven't had the chance to give you an update and just want to apologize as we didn't realize we need approval.

As mentioned previously without the food and liquor licenses we lost a lot of money this summer running the thunder on the island series. Surprisingly the free concerts actually did better than the paid ones. We had been approached by a few different groups to help us run a concert series next year as we just don't have the staff to help look for new bands like Mark used to do previously. The best by far was Dara Quinn, owner of the Emerald of Siam restaurant and Emerald Sparks production in Richland. <https://www.emeraldofsiam.com/>

We went over ideas for having events that would meet a more diverse base, as the crowd was mostly white and older for the concert series. The goal next year is to cater to a more diverse base such as the Hispanic community, we are even thinking of getting a DJ we know to do an event for the Indian American community etc..

Let me know when you would like to discuss and what we need to put this in front of the port.

Thanks Zeal.

Gurdeep (Zeal) Bains, CA, CPA  
**360.724.1295**



# PORT *of* KENNEWICK

350 CLOVER ISLAND DRIVE, SUITE 200, KENNEWICK WASHINGTON 99336 509-586-1186 [WWW.PORTOFKENNEWICK.ORG](http://WWW.PORTOFKENNEWICK.ORG)

9/25/24

Dara Quinn  
Emerald Spark Events  
[www.emeraldsparkedevents.com](http://www.emeraldsparkedevents.com)

CII Hospitality LLC  
c/o Gurdeep "Zeal" Bains  
Clover Island Inn  
435 N Clover Island Inn  
Kennewick, WA

Dara and Gurdeep:

Thank you to Dara for reaching out to the Port to discuss the launch of Emerald Spark's involvement with Thunder on the Island and the Clover Island Concert Series. And thanks also to Gurdeep for our recent conversation discussing how CII Hospitality and Emerald plan to work together to bring music performance and other entertainment options to the Island. On behalf of the Port, please know we support the success of the Concert series, which brings the public to share in all the commercial and recreational amenities of Kennewick's Historic Waterfront District, which of course includes the Clover Island Inn.

Dara was kind enough to share a copy of the Agreement between Emerald Sparks and CII Hospitality for the Series Event's management. We understand that some services to be provided by Emerald includes use of the Stage, which was purchased by the Port and is subject of an Agreement between the Port and CII Hospitality. At the request of our legal counsel, we ask that for clarity, a simple paragraph be added to the Event Management Agreement to clarify that the Agreement is not intended to impact the Stage Agreement between the Port and CII Hospitality. We understand you are ready to launch your new production venture, so to not delay progress, we include the proposed updated Event Management Agreement which contains language acceptable to the Port. After your review and acceptance, please share a copy of the signed Agreement with the Port for our records.

Again, the Port values both your respective investments in time, heart and resources to improve Clover Island as a vibrant and entertaining public gathering space. Please reach out to me if you have any questions.

Tim Arntzen  
CEO, Port of Kennewick  
Enclosure: Updated Event Management Agreement



Agreement from: Emerald Spark Productions LLC dba Emerald Spark Events

To: CII Hospitality

August 28, 2024

Going into agreement for the 20th anniversary of Thunder on the Island in 2025, Emerald Spark Events proposes a partnership to ensure the execution of a well-organized and engaging event that not only upholds the time-honored tradition of Thunder on the Island but also enhances the public perception of Clover Island Inn. Entrusting these responsibilities to Emerald Spark leverages our experience in live music event production to facilitate a seamless process for the CII Hospitality team.

## Services

### 1. Event Management

- Comprehensive event planning and coordination.
- Booking high-quality entertainment and ensuring a diverse lineup.
- Managing vendor relationships and negotiating contracts including those with light and sound technicians and backline providers.
- Providing artist hospitality according to contractual agreements and riders.
- Providing Master of Ceremony (MC) services.
- Providing labor to operate the event, including food and beverage, set-up, tear-down, and gate attendants, and merchandise table attendants.
- Barricading the east end parking lot the day before shows.

### 2. Logistics and Operations

- **Fencing and Security:** Ensure the venue is secure with appropriate fencing and professional security services.
- **Porta-Potties:** Provide adequate sanitation facilities to cater to the large audience.
- Overseeing the setup and breakdown of events.
- Ensuring all necessary permits are obtained and regulations are adhered to.
- Rental of extra supplies as needed.

### 3. Vendor and Permit Management

- **Food and Beverage Vendors:** Curate a selection of quality food and beverage vendors.
- Obtain all necessary permits for the event, including health, safety, and alcohol permits.
- Obtain music licensing permits as needed.
- Obtain event permits from local municipality(ies) as needed.
- Obtain necessary insurance policies prior to events.

### 5. Sponsorship and Partnerships

- Identify and secure sponsorships to enhance event funding.
- Create attractive sponsorship packages offering visibility and engagement opportunities.
- Develop partnerships with local businesses, including the hotel, to create mutually beneficial promotions.

### 3. Marketing and Advertising

- Campaigns: Develop targeted marketing campaigns to promote the event.
- Media Partners: Collaborate with media partners for extensive coverage.
- Social Media: Utilize social media platforms for engagement and ticket sales.

#### NOTE:

Emerald Spark Events will pay \$350.00 per event to CII Hospitality for the usage of the following:

- STAGE - 32 X 24 Apex stage
- VENUE - East end parking lot
- ELECTRICITY - CII Hospitality's electrical box is located on the East Parking Lot.
- WATER

Emerald Spark Events will contact Jeff Hess of Apex Stage to obtain training for 10 individuals to be certified stage operators. It is understood that CII Hospitality will charge \$800.00 per event to set up and tear down the stage if Emerald Spark's certified crew is unavailable.

CII Hospitality will give Emerald Spark Events access and full creative control of the website [thunderontheisland.com](http://thunderontheisland.com), however, CII Hospitality will retain ownership of the domain and the website infrastructure.

All event ticket revenue and food and beverage revenue will go to Emerald Spark Events. CII Hospitality retains the right to book events on the stage if it doesn't interfere with scheduled concerts by Emerald Spark Events. Wednesday nights between Memorial and Labor Day are exclusively reserved for Emerald Spark Events.

Other events produced by Emerald Spark Events at the CII venue. will be held on Sundays. Events taking place on Fridays and Saturdays will be cleared through CII Hospitality in advance.

CII Hospitality will not be providing the following:

- Labor to set up and tear down the event
- Gate and concert labor during the event
- Merchandise table labor (if applicable)
- Food and Beverage labor
- ROOM PACKAGES - CII Hospitality offers Emerald Spark a set rate of \$89 for Single Queen and \$99 for Double Queen plus taxes & fees per night, if Emerald Spark decides to offer a Concert Room Package to their concert attendees. To secure the discounted rate, a room block of 20 rooms will be created, no more 3 months out, and will be released 3 weeks prior to the event/concert date.

Requested Resources from CII Hospitality

- Calendar with Blackout Dates and current holds if any
- Mailing list of previous ticket holders
- List of current sponsors and their contact information
- List of permits/licenses required by city, port, or any other entity
- Agreement to co-promote events
- Copies of all previous artist contracts
- Copies of any other relevant documents relating to Thunder on the Island
- Previous marketing contacts and contracts

CII Hospitality In-Kind Sponsorship Resources

- Wifi
- Access to update website and social media
- Graphic design assets for use on marketing materials
- water & electricity
- Outdoor ice machine
- BBQ
- Access to 4th floor banquet facility with walk-in refrigerator
- Misters
- 2 portable bars
- Bar storage with walk-in cold storage
- Key to secure storage areas
- Approximately 400 chairs and 30 tables
- Cabana in east end parking lot
- Green Room/Banquet room based on availability for national acts
- 1 comped Green Room/hotel room per Wednesday band with a max of 10 rooms total for the summer of 2025. (These events will be held in CII Hospitality's east end parking lot from mid-June to mid-August of 2025).

For clarity, CII Hospitality and Emerald Sparks Production LLC acknowledge that this Agreement is not intended to be and is not an Assignment of the Stage and Rental Agreement between the Port of Kennewick and CII Hospitality and does not modify the rights and duties of the parties to that Stage and Rental Agreement.

Signed : \_\_\_\_\_ Date: \_\_\_\_\_  
Emerald Spark Events

Name: \_\_\_\_\_

Signed : \_\_\_\_\_ Date: \_\_\_\_\_  
CII Hospitality

Name: \_\_\_\_\_

**ASSIGNMENT OF STAGE RENTAL AGREEMENT  
(AND OWNER'S CONSENT)**

THIS ASSIGNMENT OF STAGE RENTAL AGREEMENT (this "Agreement") is made and entered into as of this 9<sup>th</sup> day of April, 2024 (the "Effective Date"), by and between the PORT OF KENNEWICK, a municipal corporation created pursuant to the laws of the State of Washington, (as "Owner") and CII HOSPITALITY, LLC, a Washington limited liability company (as "Assignee"), and CLOVER ISLAND DEVELOPMENT COMPANY, LLC, a Washington limited liability company (as "Assignor"), who are collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, on or about October 13, 2023 Assignor and Owner entered into a Stage Rental Agreement, a copy of which is attached to this Agreement as "**Exhibit A**;" and

WHEREAS, Assignee desires to assume all rights, duties, and liabilities that Assignor has under the Stage Rental Agreement, including the use of the stage and the payment of rent to the Owner; and

WHEREAS, Assignor desires to assign to Assignee all of its right, title and interest in the Stage Rental Agreement; and

WHEREAS, Owner specifically consents to the assignment as provided in this instrument.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee all of its right, title and interest in and to the Stage Rental Agreement, subject to all terms and conditions contained in the Stage Rental Agreement.
2. Assumption of Assignment by Assignee. Assignee hereby assumes and agrees to fully pay and perform all obligations, duties, and liabilities of the Stage Rental Agreement to be performed by Assignor, and to be bound by all of the provisions thereof, including the duty to pay all rental and other charges required under the provisions therein. Assignee will hold Assignor harmless from any damages or expenses incurred by Assignor after

the Effective Date of this assignment under the provisions of the Stage Rental Agreement.

3. Consent of Owner. Owner hereby consents to the assignment of the State Rental Agreement by Assignor to Assignee, as provided herein, and further releases Assignor from all liabilities to Owner thereunder. Owner confirms to Assignee that, as of the date hereof, (i) the Stage Rental Agreement is in full force and effect; (ii) the Stage Rental Agreement has not been amended or modified; and (iii) Assignor has performed all obligations required of it under the Stage Rental Agreement.
  
4. Counterparts. This Agreement may be executed in any number of counterparts by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts when taken together shall constitute one and the same instrument.

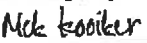
*[Remainder of page left intentionally blank. Signature page to follow.]*

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


**OWNER:**  
**PORT OF KENNEWICK, a Washington**  
**Municipal corporation, by authority of its Commissioners**

By:   
Tim Arntzen, Chief Executive Officer


Approved:

DocuSigned by:  
  
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Nick Kooiker, Chief Financial Officer

Approved as to Form:

DocuSigned by:  
  
2448FAF108544B2...  
Taud Hume, Port Counsel

**ASSIGNEE:**  
**CII HOSPITALITY, a Washington limited liability company**

By:   
Its: Managing Member/Owner

**ASSIGNOR:**  
**CLOVER ISLAND DEVELOPMENT COMPANY,**  
**a Washington limited liability company**

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

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



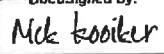
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date first written above.

**OWNER:**  
**PORT OF KENNEWICK, a Washington**  
**Municipal corporation, by authority of its Commissioners**

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

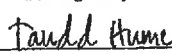
Tim Arntzen, Chief Executive Officer

Approved:

DocuSigned by:  
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Nick Kooiker, Chief Financial Officer

Approved as to Form:

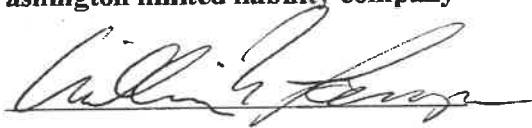
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Taudd Hume, Port Counsel

**ASSIGNEE:**  
**CII HOSPITALITY, a Washington limited liability company**

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

**ASSIGNOR:**  
**CLOVER ISLAND DEVELOPMENT COMPANY,**  
**a Washington limited liability company**

By:  \_\_\_\_\_  
Its: MANAGER \_\_\_\_\_

**EXHIBIT A**  
*(Stage Rental Agreement)*

EXHIBIT A  
**STAGE RENTAL AGREEMENT**

THIS STAGE RENTAL AGREEMENT (this "Agreement") is entered into on this 13th day of October, 2023 (the "Effective Date") by and between the Port of Kennewick, a Washington municipal corporation, having offices for the transaction of business at 350 N. Clover Island Drive, Suite 200, Kennewick, WA 99336 (the "Port"), and Clover Island Development Company, LLC, a Washington limited liability company (the "Renter"), who are collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, the Port owns an APEX 3224 Hydraulic Mobile Stage (the "Stage"); and

WHEREAS, the Port wishes to rent out the Stage in exchange for a rental fee; and

WHEREAS, the Renter operates a hotel business located at 435 Clover Island Drive, Kennewick, WA 99336 (the "Renter Property") and wishes to rent the Stage from the Port for the purpose of having concerts at the Renter Property; and

WHEREAS, the Port agrees to accept a fee for renting the Stage in accordance with the terms of this Agreement.

**AGREEMENT**

NOW, THEREFORE, based on the foregoing Recitals the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are hereby incorporated into this Agreement by this reference.
2. **Term.** This Agreement shall commence upon the date the Stage is first delivered to Renter (the "Date of Delivery") and shall continue for a period of ten (10) years thereafter (the "Original Term"). After the Original Term, Renter shall have two (2) consecutive five (5) year option periods – a First Option Period and a Second Option Period - that may only be triggered by Tenant by giving the Port ninety (90) days written notice prior to the end of the Original Term or First Option Period, whichever the case may be. If Renter does not provide such notice, then the Parties agree that this Agreement will terminate at the end of the then current Term period.
3. **Rental Fee.** The Renter shall pay a monthly rental fee of THREE HUNDRED DOLLARS (\$300.00) to the Port on or before the first day of each month for the duration of the Term. Any partial months contained in the Term may be prorated. Renter may prepay Rental Fee payments. Rent will increase by five percent for each option period. Rent for the First Option Period will include a 5% escalation over the Original Term rent and rent for the Second Option Period will include a 5% escalation over the First Option Period rent.
4. **Damage Deposit.** The Renter shall provide a damage deposit in the amount of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) due on the Date of Delivery. The damage deposit shall be held by the Port and may be applied to compensation owing to the Port in accordance with this Agreement, or returned to Tenant, whatever the case may be.

5. Port Obligations. The Port shall rent the Stage to the Renter and shall make sure that it is clean and properly functioning at the Date of Delivery, and shall provide engineered anchoring points for the stabilization of the Stage. The Port shall pay the costs for personal property insurance of the Stage, and the annual fees for trailer tabs and licensing.
6. Renter Obligations.
  - 6.1 Use and Operation.
    - a. The Renter shall respect all manufacture recommended safety precautions and standard operating procedures, including, but not limited to, those standards addressing wind resistance, installation and dismantle procedures, stage rigging restrictions and instructions from any stage technician present on site. For convenience only, some of those standards are attached hereto in **Exhibit A.**
    - b. Renter must notify other local authorities and agencies of program plans and obtain, at Renter's sole expense, all necessary permits, licenses and approvals. Renter must always operate the Stage in a manner consistent with local, State and Federal law, the manufacturer's safety and warranty instructions, and consistent with any restrictions or conditions contained in its ground lease with the Port.
    - c. Renter is responsible for ensuring that all activities are properly controlled and supervised to prevent damage to the Stage and injury to persons and/or property.
    - d. Renter may only use the Stage on the Renter Property for concerts and may not disassemble the Stage and reassemble it for use elsewhere.
    - e. Renter shall be responsible for all maintenance and repairs of the Stage during the Term. The Parties understand and agree that the Port shall not be responsible for any maintenance, repairs, upkeep or cleaning of the Stage so long as this Agreement is in force and effect. The Renter shall work directly with the manufacturer regarding any warranty claims related to the Stage and the Port will cooperate as necessary.
    - f. Renter shall store any and all banners associated with the Stage in a secure and clean location and shall be responsible for replacing such banners in the event of harm.
  - 6.2 Insurance. During the Term, the Renter shall, at its own expense, be responsible for providing General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, personal injury liability protection including coverage relating to employment of persons, contractual liability protection and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate and with property damage limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The insurance policy shall list the Port as an additionally named insured. The insurance policy shall contain, or be endorsed to contain, that the Renter's insurance coverage shall be primary insurance with respect to the Port. Any insurance, self-insurance, or self-insured pool coverage maintained by the Port shall

be excess of the Renter's insurance and shall not contribute with it. Renter must also provide the Port with a waiver of subrogation endorsement. An insurance certificate indicating aforementioned coverage conditions must be provided to the Port at least seven (7) business days after the Effective Date, but in no event such coverage must be in effect prior to Tenant's first use of the Stage.

- 6.3 Weather. The Renter is responsible to provide weather monitoring for the site at all times. In the event of weather that poses a risk of damage to the Stage (rain, high winds or lightning), the Stage will remain closed until such conditions have subsided sufficiently to mitigate such risk. Renter agrees to abide by all manufacture's safety precautions and instructions, including, but not limited to, the High Wind Action Plan and other relevant materials attached hereto in **Exhibit A**.
- 6.4 Return of the Stage. The Renter is responsible for ensuring that at the end of the Term, the Stage is clean, in proper working order, and in as good of a condition as existed at the Effective Date (subject to reasonable wear and tear). The Renter acknowledges that additional costs may be charged to the Renter if, in the sole opinion of the Port, the Stage has been damaged beyond reasonable wear and tear. The damage deposit may be used to offset the cost. This fee shall be in addition to any other fees or costs owing to the Port in relation to this Agreement.
7. Risk of Liability. The Renter assumes the risk of liability and shall pay for any loss or damage arising from or pertaining to the possession or operation or use of the Stage from any cause whatsoever and, without limiting the generality of the foregoing, liability or loss arising from fire, theft, loss, or destruction, of the Stage or any part thereof.
8. Termination. The Port may terminate this Agreement, in its sole discretion and for any reason, by providing the Renter written notice of the Port's desire to so terminate, which shall become effective fifteen (15) days from the later of (i) the date of the written notice of termination, or (ii) the date of the last event where Tenant has a signed contract with a third party to utilize the Stage; which termination date shall in no event be longer than one hundred eighty (180) days from the date of the Port's written notice of termination. Renter acknowledges and understands that the Port shall not assume any responsibility or reimburse the Renter for any costs incurred in relation to this Agreement should the Agreement be terminated in accordance with the terms of the Agreement.
9. Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be addressed to the representative of each party at the address below:
- Port of Kennewick  
Attention: Tim Arntzen  
350 Clover Island Drive, Suite 200  
Kennewick, WA 99336
- Clover Island Development Company  
Attention: William (Bill) Lampson  
435 Clover Island Drive  
Kennewick, WA 99336
10. Non-Assignment and Subletting. This Agreement shall not be assigned, nor shall the Stage be sublet by the Renter without the prior written approval of the Port, which permission shall not be unreasonably withheld.

11. Non-Waiver. Failure of the Parties to insist upon or to enforce strict performance of any of the terms of this Agreement shall not be construed as a waiver of their rights to assert or rely upon such terms subsequently.
12. Indemnification. To the fullest extent permitted by law, the Renter expressly agrees to defend, indemnify and hold harmless the Port from and against any and all claim or loss arising out of any violation of any law, rule or order, and from any and all claims or liabilities, including reasonable attorney's fees, for loss, damage or injury to persons or property of whatever kind or nature caused by or resulting from or arising out of any act or omissions on the part of Renter, its subcontractors, agents or employees under or in connection with this Agreement, relating to Renter's use of the Stage, or the performance or failure to perform any obligation required by this Agreement. The Parties understand and agree that the duty to defend arises immediately upon the threat or filing of a claim by a third party, and is not otherwise contingent upon a finding of fault or liability by a court of law or adjudicative body. In no event shall the Port be liable for any consequential, incidental, indirect, punitive or special damages in connection with this Agreement.
13. Entire Agreement. This Agreement contains the entire agreement and understanding between the Port and the Renter, and supersedes all prior representations and discussions pertaining to all matters directly or indirectly covered in this Agreement. There are no conditions, warranties, representations, understandings or agreements of any nature other than as set out in this Agreement. By executing this Agreement, the Renter acknowledges that it has taken as much time and independent advice as thought necessary to consider matters before entering into this Agreement. This Agreement may only be amended by a subsequent written instrument signed by both Parties.
14. Acknowledgement and Acceptance of Terms. Each of the Parties agree that it fully understands the terms of this Agreement and accepts the provisions of this Agreement voluntarily, acting wholly upon its own judgement, belief and knowledge and that it has not been influenced in entering into this Agreement by any act, statement or representation of any party to this Agreement.

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

**PORT OF KENNEWICK, a Washington  
Municipal corporation, by authority of its Commissioners**

By:   
887EAA4F32B4455...

Tim Arntzen, Chief Executive Officer

Approved:

DocuSigned by:  
Nick Kooiker  
DAC086A4B5BD4FB...  
Nick Kooiker, Chief Financial Officer

Approved as to Form:

DocuSigned by:  
Taadd Hume  
2446FAP10854482...  
Taadd Hume, Port Counsel

**RENTER:**

**CLOVER ISLAND DEVELOPMENT COMPANY,  
a Washington limited liability company**

By: Bill Lampson  
6BCCDD688CAE4A5...  
William Lampson

Its: Partner

**EXHIBT A**  
*(APEX Stage Manufacturer Materials)*



**APEX 3224 / 2420**

**HYDRAULIC MOBILE STAGE**

**USER MANUAL**

**REVISION C – 3.18.19**

This manual is sole property of Progressive Products Inc. (PPI). PPI reserves the right to modify and make improvements to the design and specifications without notice.

**TABLE OF CONTENTS**

SETUP GUIDELINES.....3  
TAKE DOWN GUIDELINES.....4  
SPEAKER WING/SUPPORT CABLE INSTALL DETAILS.....5-6  
STRUCTURAL PIN PONITS.....7  
GENERAL SPECIFICATION LIST.....8  
WARRANTY/SERVICE INFORMATION.....9-10

## SETUP GUIDELINES

1. After positioning the stage, remove any straps holding the roof sides in.

**NOTE: The gas or electric motor can be stopped or started at any time during the setup.**

Previous versions of your stage have been equipped with an energy valve that allows you to choose between powering the hydraulic system with either a gas or electric motor. The energy valve has since been replaced with check valves which accomplish the same task without having to manually switch between the gas motor and electric motor.

**WARNING: The gas engine and electric motor MUST NOT BE RUN AT THE SAME TIME. One motor must be fully stopped before activating the other, otherwise, damage to the hydraulic system/unintended operation can result.**

2. Start the motor and open each roof panel 2'-3' or to just past the fenders. Center the outrigger pads underneath the outrigger cylinders. Raise the stage with the outrigger cylinder levers enough to release the gooseneck coupler from the hitch ball. Make sure the energy valve is pushed "in" to move the outriggers and "out" for everything else. Remove all wiring attachments from trailer to towing vehicle. Move the towing vehicle clear of the stage.
3. Using a carpenters level (2' level), level the stage front to back and side to side at the desired stage deck height.
4. Open each roof panel fully.
5. Lower both floor panels about 2/3's of the way down. Place all floor jacks on each floor in the down position. After all jacks are down, lower the floor all the way down until the jacks touch the ground or the floor appears level. **WARNING: Do not lower the floor past level, at a downward angle, or damage to the stage can result.** Adjust floor jacks as needed using the 15/16" wrench provided with your stage, along with the level, and fine tune the floor to ensure it is level and supported by all jacks. Insert hinge gap slats between Floor 0 and Floor 1.
6. Lower each roof panel low enough so you can 1) Hang the wind wall scrim off the 3/8" curtain rod on the inside of the roof. 2) Attach the speaker support cables (reference photos in this manual). 3) Pin the top of the corner towers to the roofs. The longer towers go on the front of the stage while the shorter towers go on the rear (for proper water drainage). After attaching the corner towers to the roof sections, place the plastic tower shuttles under the towers to keep from scratching the floor when the roofs are raised (reference photos for speaker wing and cable setup shown in this manual).
7. With all 4 corner towers attached to the roof and the tower shuttles under them, start raising the roof by using the mast levers. Move each mast individually, one after the other until you can pin your masts with the provided pins. After pinning the masts, slightly lower them in order so they load or rest on the pins.

**WARNING: DO NOT raise either mast more than 6" above or below the other or you will risk damaging the structure of the stage.**

8. After the masts are pinned, lower or raise each roof side to align the bottoms of the corner towers with the female coupler mounted to the corners of Floor 1 (see Stage Pin Points picture). Once the bottom of the corner towers are inserted into the couplers, secure in place using pins.
9. Attach the bottom of the wind wall to the 3/8" curtain rod underneath the edges of the floor. Hang the front skirt to the bottom of the stage-front floor, if applicable. Attach handrails, steps, hinge gap slats. Shut motor off.

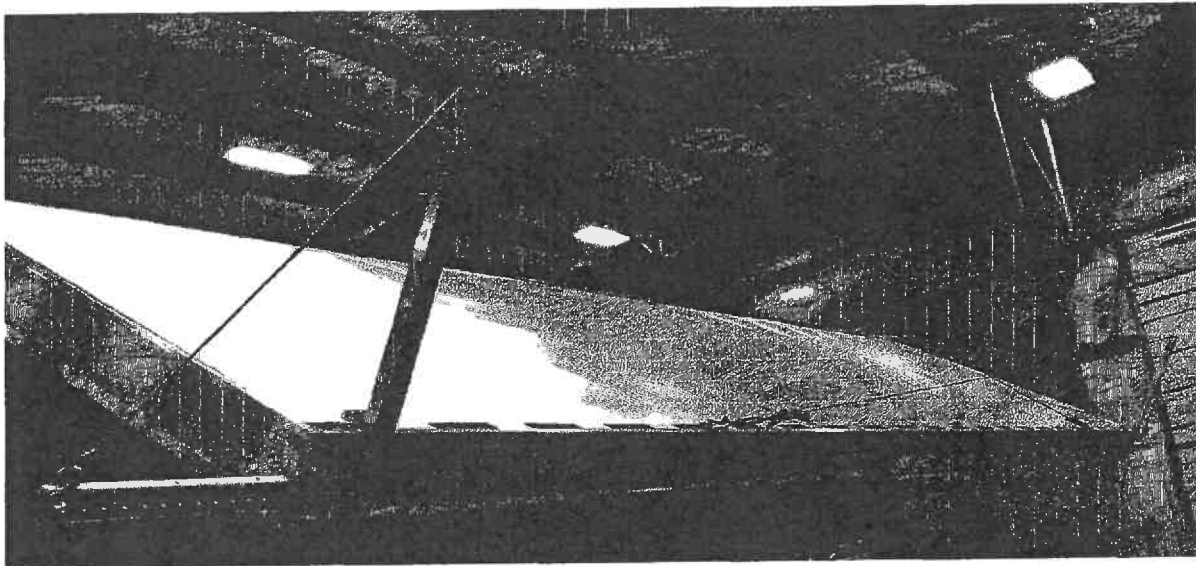
## TAKE DOWN GUIDELINES

1. Start motor. Take pins out of bottom of corner towers. Raise each roof side enough to unhook bottom of corner towers, then bring the roofs in slightly in order to place the bottom of the corner towers on the Tower Shuttles.
2. Unpin the mast sections – you may need to raise each mast very slightly to unload the pins. Lower each mast section incrementally (**not to exceed 6" difference between them**) to bring the entire roof down. Ensure corner towers do not scratch the deck of the stage – use Tower Shuttles.
3. Fold in each roof section slightly so the corner towers can be unpinned at the top.
4. Remove hinge gap slats, handrails, wind wall, front skirt, steps, etc. Failure to remove the hinge gap slats will result in them being smashed when the floors are folded up.
5. Raise roof panels up fully, and then ensure everything is loaded in the center part of the stage prior to folding the floors up. Don't forget to load the YELLOW support jacks from underneath the main I-beams.
6. Raise each floor about 1/3 of the way up, and then pin floor jacks up. After all the floor jacks are up, raise the floors completely up.
7. Lower each roof panel until they are 2'-3' from closing, or just outside the fender.
8. Push the energy valve lever in on the control panel to operate the outriggers, and raise the front outriggers as needed so the towing vehicle can be hooked to the trailer. Close the roofs the rest of the way. Lower the stage onto the towing vehicle hitch ball and secure.
9. After the stage is connected to the towing vehicle, raise ALL outriggers completely up. Failure to raise all outriggers may result in road damage.
10. Install straps between roof sections to prevent unnecessary movement of the roofs during transport.

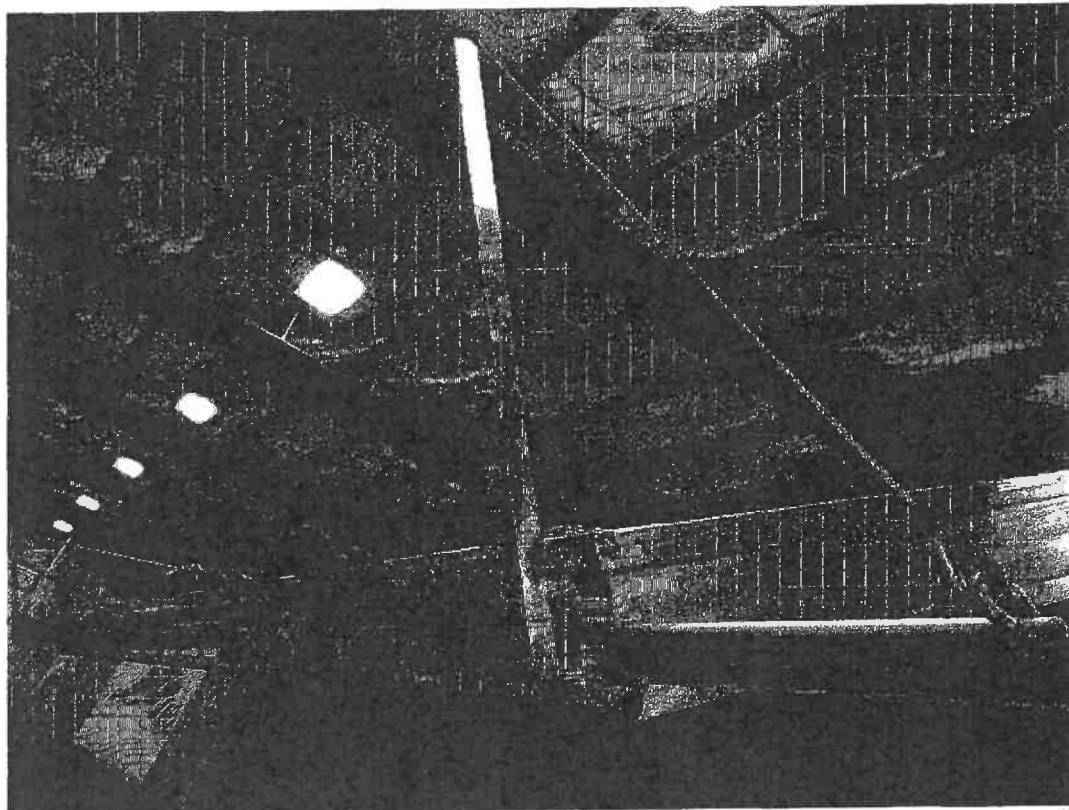
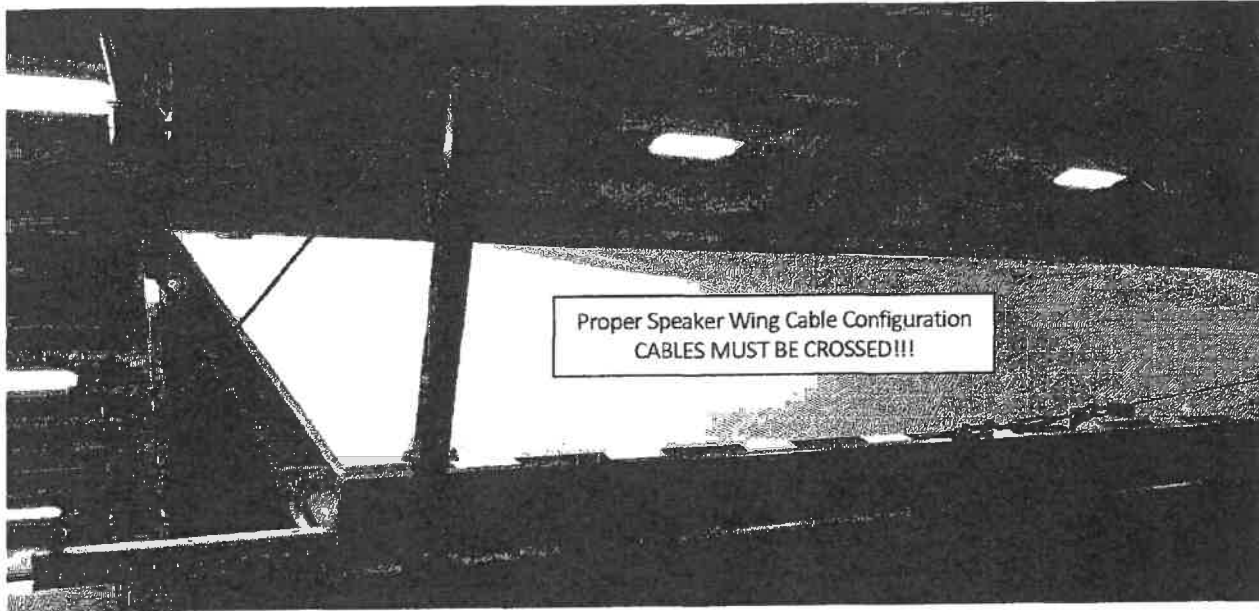
**This area intentionally left blank.**

## SPEAKER WING/SUPPORT CABLE INSTALL DETAILS

In order to attach speaker support, remove bolt at right of above picture and replace with swivel hoist ring. Remove bolt at left of picture, position support and re-bolt. Pin also goes back in same spot through both pieces. Attach cable and tighten. See picture below.



## SPEAKER WING/SUPPORT CABLE INSTALL DETAILS – CONT.



## STRUCTURAL PIN POINT DETAILS

Pinned Mast

Pinned Top Corner Tower

Corner Tower, Bottom Pin Point

## APEX 3224/2420 GENERAL SPECIFICATION LIST

\*Specifications listed are for general reference only. Professional engineering drawings provided with your stage are the ultimate authority for loading/safety and should be adhered to in their entirety at all times.

### TRAILER

Length – 26' (2420), 34' (3224)  
 Width – 102" (3224, 2420)  
 Height – 10'-4" (2420), 12'-2" (3224)  
 Cargo Space – 6'-11" X 23'-4" (2420), 6'-11" X 31'-4" (3224)  
 Cargo Capacity – 6000LBS (2420), 4000LBS (3224)  
 Trailer Weight – 12,000LBS (2420), 14,000LBS (3224)  
 Tongue Weight – 1,500LBS (2420), 1,800LBS (3224)  
 Rear Axle Rating – 9100LBS (2420/3224)  
 Front Axle Rating – 9100LBS (2420/3224)  
 GVWR – 20,000LBS (2420/3224)

### STAGE DECK

Floor Size – 24' X 20' (2420), 32' X 23'-8" (3224)  
 Floor Height – 39"-54" (2420), 46"-66" (3224)  
 Ground to Roof – 16'-8" (2420), 22'-7" (3224)  
 \*Floor Rating – 50lb/sqft (2420/3224)  
 Structure – Aluminum / Marine-grade Plywood (2420/3224)  
 Floor Support – 10x 8,000lb Jacks (2420), 17x 8,000lb Jacks (3224)

### STAGE ROOF

Covered Roof – 22'-9" X 26' (2420), 26'-3" X 34' (3224)  
 Deck to Roof Top – 13'-2" (2420), 16'-7" (3224)  
 Deck to Bottom of Center I-Beams – 11'-8" (2420), 15'-4" (3224)  
 Deck to Bottom of Downstage I-Beam – 11'-5" (2420), 15'-7" (3224)  
 Deck to Bottom of Upstage I-Beam – 11'-11" (2420), 15'-1" (3224)  
 Surface – Aluminum / Fiberglass (2420/3224)  
 \*Fly Bay Capacity – 2000lbs (2420/3224)  
 \*Downstage I-Beam – 1000lbs evenly distributed (2420/3224)  
 \*Upstage I-Beam – 1000lbs evenly distributed (2420/3224)  
 \*Center I-Beam – 750lbs evenly distributed (2420/3224)  
 \*Total Roof Capacity – 11,500lbs (approximately)  
 Speaker Wing Bar Slide-Out Length – 2'-3"

### OTHER

Install Time – 30minutes to 1 hour (2420/3224)  
 Wind Safety – See High Wind Action Plan (HWAP) on engineering drawings. (2420/3224)  
 Personnel Required – 2 minimum (2420/3224)  
 Site Prep – None (2420/3224)  
 Hauling Mode – ¾ or 1 ton Pickup Truck / Semi (2420/3224)  
 Primary Power Source – 5hp Honda Gas Motor (2420/3224)  
 Secondary Power Source – 1.5hp Electric Motor, 110VAC (2420/3224)

### TIRES

Tire Size – 235/85/R16 (2420/3224)  
 Rim Size – 16X6 (2420/3224)  
 Tire Pressure – See Tire Sidewall  
 (2420/3224)

### HYDRAULIC SYSTEM

Hydraulic Fluid Type – AW32  
 meets regulation HR-2 ASTM D.943

Hydraulic Fluid Filter – CROSS 10 micron  
 Part# 1A9021



**Limited Warranty:**

- A. Progressive Products, Inc. (PPI) warrants the following with respect to the product manufactured by PPI or bearing the PPI (or Apex Stages) label: (1) that the product is free from defects in material and workmanship and when used in accordance with the user manual supplied with the product, will operate substantially in accordance with the applicable functional specifications applicable to the product purchased; and (2) that upon payment in full for the product, they will be rendered free and clear of liens, claims or encumbrances of any.
- B. The above product warranty shall extend solely to the original end user purchaser of the product for a period of 12 months from the date of shipment from PPI facilities, unless otherwise stated on a formal quotation issued by PPI. With respect to any products sold but not manufactured by PPI or bearing the PPI label, PPI will assign to customer all available manufacturer warranties.
- C. PPI's sole liability under this warranty shall be (a) either to repair or to replace, at PPI's option; the defective product component(s) in accordance with PPI's return and repair procedures, or (b) if after repeated efforts PPI is unavailable to resolve the defect by repair or replacement, to refund the purchase price upon return of the defective item. The warranty period for repaired or replaced products shall be the remainder of the original warranty period for the repaired or replaced item. PPI shall incur no obligation under this warranty if (1) the allegedly defective product is returned to PPI more than thirty (30) days after the expiration of the applicable warranty period; (2) if PPI's verifiable tests disclose that the alleged defect is not due to defects in material or workmanship; or (3) if, in PPI's sole judgment, the product has been subject to misuse or neglect, alteration, improper maintenance or damage due to excessive physical use, heat, or stress. This product warranty is void if the serial number of the product has been defaced, altered or removed.
- D. All warranty claims MUST be submitted in writing to receive service. Verbally notifying PPI of a warranty problem does not waive this obligation.

**Exclusions:**

The warranties set forth above for the products provided hereunder are complete and are in lieu of, and customer hereby waives, all other conditions, representations, and warranties, express or implied by statute, usage, custom of the trade or otherwise, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. Notwithstanding any other or prior statement, written or oral, PPI makes no other warranties regarding the quality of its' product(s) or the materials contemplated hereunder and PPI expressly disclaims any warranties of durability, that the product will meet all of customer's needs or that the operation of the product(s) will be error free.

**Limits of Liability:**

PPI's liability shall be limited to the price paid by customer for the goods, or repair of the goods, and customer shall be entitled to no other remedy, regardless of the form of the claim. PPI shall not be liable for indirect, special, incidental, consequential or punitive damages arising from or relating to the use or inability to use the product, whether or not customer has been advised of the possibility of such damages, including but not limited to loss of profits or revenue, attorney's fees, damage to business, loss of use of equipment, cost of capital, down time costs or damages for delay, or for damages for economic losses or property damage arising from any acts or omissions, whether in negligence, strict liability, or other product liability theories. The limitation of liability and warranty disclaimers stated in this agreement form an essential basis of the bargain between the parties and apply regardless of whether any limited remedy hereunder fails of its' essential purpose.

By installing or using this product, the user accepts all terms described herein.

**Law, Jury Waiver:**

Customer agreed that this warranty, and all claims related to the manufacture repair of the product shall be governed and construed in accordance with Kansas law. Customer consents to jurisdiction in venue of any state or federal court in Kansas and waives the defense of inconvenient forum. For any action arising out of or relating to this product, repair, or the equipment, YOU WAIVE ALL RIGHTS TO A TRIAL BY JURY.

**How to Obtain Service under this Warranty:**

If you have problems with your stage, please contact us at (620)-235-1712. However, all warranty claims MUST be submitted in writing to receive service. Notifying Progressive Products, Inc. verbally does not constitute a warranty claim.

The user must use one of the following methods:

E-mail at [sales@apexstages.com](mailto:sales@apexstages.com)

Fax at (620)-235-1772

Mail To:

Progressive Products, Inc.

Attn: APEX Warranty

3305 Airport Circle

Pittsburg, KS 66762

It is the responsibility of the stage owner to make sure the written warranty claim has been received by Progressive Products, Inc. before the end of the warranty period. No service can be performed unless a written claim is received.

ALL repairs must be authorized by Progressive Products, Inc. Any unauthorized repairs could void the warranty.

**Requirements:**

Return shipping costs to be paid for by the user. The cost of shipping to the manufacturer, or authorized repair center or payment of any customs clearance fees or duties is the responsibility of the user.

**CUSTOMER:**

**ORDER NUMBER:**

**SERIAL NUMBER:**

**DATE OF PURCHASE:**

**PRODUCT:**

**HIGH WIND ACTION PLAN APEX 3224/2420**

1. THE HIGH WIND ACTION PLAN SHALL BE IN EFFECT FOR THE ENTIRETY OF THE EVENT. AN EVENT SHALL BE DEFINED AS STARTING AT THE INITIAL COMMENCEMENT OF THE STRUCTURE INSTALLATION AND ENDING ONCE THE STRUCTURE IS COMPLETELY DISMANTLED.
2. A COMPETENT RESPONSIBLE PERSON FROM THE VENUE OR RIGGING COMPANY SHALL BE PRESENT FOR THE DURATION OF THE EVENT (SEE ABOVE) TO IMPLEMENT THE HIGH WIND ACTION PLAN.
3. A REGULAR LIAISON WITH LOCAL AIRPORTS AND/OR WEATHER INFORMATION CENTERS SHALL BE MAINTAINED TO ASCERTAIN IF ANY SIGNIFICANT WEATHER EVENTS ARE EXPECTED IN THE IMMEDIATE VICINITY OF THE STRUCTURE
4. AN ANEMOMETER SHALL BE PLACED ON THE STRUCTURE TO MONITOR WIND SPEEDS. THE ANEMOMETER SHALL BE PLACED AT THE TOP OF A TOWER OR AN ADJACENT STRUCTURE AT A HEIGHT EQUIVALENT TO THE HEIGHT OF THE TOWER. THE ANEMOMETER SHALL BE LOCATED WITHIN 50 YARDS OF THE STRUCTURE.
5. NOTED WINDS SPEEDS ARE 3 SECOND GUSTS IN ACCORDANCE WITH ASCE 7.
6. **WHEN WIND SPEEDS ARE EXPECTED TO EXCEED 15 MPH:** ALL SCRIM ASSOCIATED WITH THE BANNER PACKAGE SHALL BE REMOVED FROM THE SYSTEM. THIS INCLUDES THE BANNER SCRIM ON TOP OF THE STAGE THAT CONCEALS THE SPEAKER WING WIRES AND THE SPEAKER WING BANNER SCRIM. LOWERING OF SCRIM SHALL BE DONE FROM THE GROUND BY MEANS OF REMOTELY ACTIVATED EQUIPMENT SUCH AS MOTORS OR MECHANICAL RELEASES.
7. **WHEN WIND SPEEDS ARE EXPECTED TO EXCEED 30 MPH:** ALL SCRIM SHALL BE REMOVED FROM THE SYSTEM. ALL RIGGING EQUIPMENT AND SPEAKER CLUSTERS SHALL BE LOWERED TO THE GROUND AND SECURED. LOWERING OF SCRIM OR EQUIPMENT SHALL BE DONE FROM THE GROUND BY MEANS OF REMOTELY ACTIVATED EQUIPMENT SUCH AS MOTORS OR MECHANICAL RELEASES.
8. **WHEN WIND SPEEDS ARE EXPECTED TO EXCEED 45 MPH:** ALL SHOW OPERATIONS SHALL CEASE AND THE IMMEDIATE AREA SHALL BE EVACUATED. LOWER ROOF IF TIME PERMITS AND WIND SPEEDS ARE BELOW 15 MPH. ALL PERSONNEL SHOULD MAINTAIN SAFE DISTANCE FROM THE ROOF SYSTEM AS COLLAPSE MAY OCCUR.
9. THE HIGH WIND ACTION PLAN SHALL BE POSTED AT A CONSPICUOUS AREA ON SITE. IT MUST BE AVAILABLE AT ALL TIMES TO VENUE OPERATORS AND CREW.





## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** September 24, 2024

**AGENDA ITEM:** Vista Field Purchase & Sale Agreement – Lot 18 – 625 Crosswind Boulevard; Resolution 2024-18

**I. REFERENCE(S):**

- Letter of Intent dated June 16, 2022

**II. FINANCIAL IMPACT:** Revenue \$74,340.00

**III. DISCUSSION:**

Local entrepreneur Amber Keller submitted her letter of intent to the port at the Vista Field grand opening on June 16, 2022. Her desire is to construct a 4,128 square foot building on lot 18 (625 Crosswind Boulevard) to showcase her retail business, Blueberry Bridal Boutique.



July 11, 2023 the port commission agreed through consensus to approve a 90-day Right to Negotiate with Blueberry Bridal Boutique.

Lot 18 is located at the corner of Crosswind Boulevard and Azure Drive. Ms. Keller specifically chose this parcel for the angle of light that could spill into her showroom from several large windows on two sides of her building.



Shortly after submitting her proposal for Lot 18, interest rates started increasing dramatically in response to fears of a national post COVID recession. Even with the economic conditions outside of her control, Ms. Keller continued to work with her design team and the Vista Field Town Architect refining her building to fit within the Vista Field vision and the aesthetic she wanted for her business.

Along the way she found a banking partner in Baker Boyer Bank and received her pre-qualification for a construction loan from Northwest Business Development Association as part of the U.S. Small Business Administration's lending program.

Her 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. Keller has selected Kaizen Construction and Development as her contractor.

Purchase and sale agreement highlights:

- Vista Field Lot 18 – 625 Crosswind Boulevard
- 4,956 square foot parcel
- 4,128 square foot restaurant building
- Uses: Retail
- Price - \$74,340.00 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 Amber Keller as owner of Blueberry Bridal Boutique 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 2024-18 approving a purchase and sale agreement with Blueberry Bridal Boutique LLC for the purchase of lot 18 in the port's Vista Field redevelopment project; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.***

***PORT OF KENNEWICK***

**RESOLUTION No. 2024-18**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK TO  
APPROVE A PURCHASE AND SALE AGREEMENT  
WITH BLUEBERRY BRIDAL BOUTIQUE 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 4,128 square foot building on Lot 18 within the first phase of Vista Field redevelopment from entrepreneur Amber Keller of Blueberry Bridal Boutique, LLC; and

**WHEREAS**, Blueberry Bridal Boutique, LLC (Purchaser), has offered to purchase approximately 4,956 square feet of the area graphically depicted on “*Exhibit A*” as 625 Crosswind Boulevard at the Port of Kennewick’s Vista Field redevelopment project in Kennewick, Washington from the Port of Kennewick (Seller) for \$74,340.00; 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 Blueberry Bridal Boutique, LLC for lot 18 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 24th day of September, 2024.

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

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

SKIP NOVAKOVICH, President

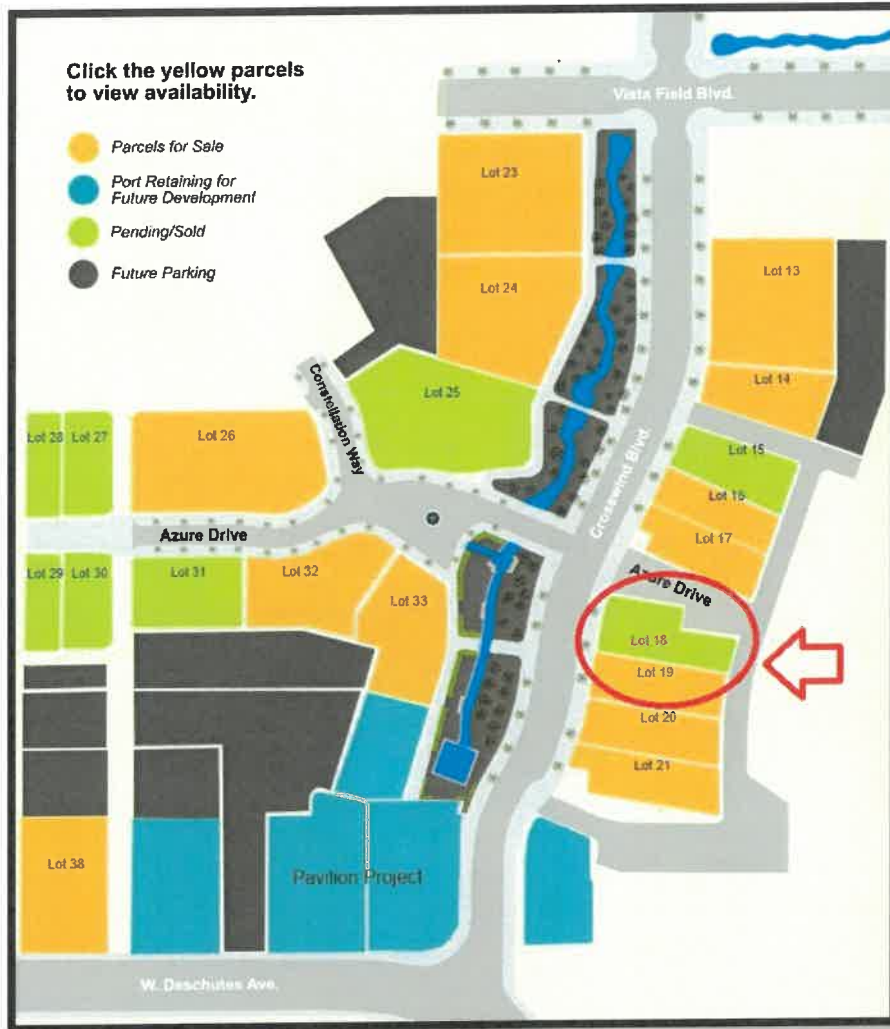
By: \_\_\_\_\_

KENNETH HOHENBERG, Vice President

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

THOMAS MOAK, Secretary

**EXHIBIT A**



Bridal Beauty

Bridal Boutique





June 16<sup>th</sup>, 2022

Dear Members of the Port of Kennewick Board,

My name is Amber Keller and I am the sole owner of Blueberry Bridal Boutique in Kennewick. I was born and raised in the Tri-Cities. The Tri-Cities has grown and changed so much. It has been both exciting and fulfilling to be a business owner in this community and be a part of its growth. Building and designing is in my family's blood as is my entrepreneurial spirit. My sister is also a proud Tri-Cities business owner having a business for over 20 years.

Being a small business owner has been a dream of mine for as long as I can remember. Although, I didn't know exactly what entrepreneurial route I was going to take until I started working at another bridal shop. About 12 years ago, I was living in Seattle and took a part time job at a small bridal salon. Within the first couple of days something powerful came over me and unbeknownst to me the course of my life was about to change. I had found my passion. I had found my calling. I had found my path. The feeling I got when I was able to help a bride find her dress was so profound. In a small way, I was making someone else's dream come true and I loved being a part of that. I just want people to be happy in their lives. And for me, it involves helping a bride walk down the aisle feeling the most beautiful she has ever felt. But it is about a lot more than that. It's about solving a problem for our local brides who no longer have to travel to Seattle, Portland, or Spokane to find their gown. It's about giving them a great experience right in their home town. I have found that people want to support local, small businesses whenever they can. They understand the impact they have on helping their community.

I have already succeeded beyond what I thought was possible and I'm living my best life. Having now been open for almost 4 years, I can honestly say that it has been the most amazing experience of my life. Being lucky enough to persevere through the first year and then through a couple of Covid pandemic years has given me real world knowledge and experience of running a business in tough times. When you meet me, you will be meeting someone who is happy every day. Happy because I am living proof that dreams really do come true. Which brings me to the next phase of my growth. I feel like I have been preparing for This Moment, This Opportunity my whole life. I feel like everything is falling into place and my purpose is being acknowledged. It's the perfect opportunity for me to grow my business and build my forever home for Blueberry Bridal. I see great things in the future, being able to grow in that space, hire employees, and thrive in that community with the future neighbors and businesses within Vista Field. The walkable neighborhood, potential for connectivity, the blue street lights, tree-lined streets, and the water features all make it seem like an idyllic painting.

Please accept my unpolished proposal as I am awaiting future details and requirements from outside sources to be able to complete my proposal in full. I do not want to lose my opportunity and I want the Board members to be aware of my utmost interest in Lot 18.

Sincerely,

A handwritten signature in cursive script that reads "Amber Keller". The signature is written in black ink and has a long, sweeping horizontal line extending to the right from the end of the name.

Amber Keller  
Blueberry Bridal Boutique  
8901 W. Tucannon Ave.  
Suite 155  
Kennewick, WA 99336

If you need to reach me, you can in the following ways:

206-612-2707 cell  
509-579-4099 work  
[blueberrybridalboutiqu@gmail.com](mailto:blueberrybridalboutiqu@gmail.com)

## COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is made as of this 24th day of September, 2024 (the “Effective Date”), by and between the Port of Kennewick, a Washington municipal corporation (as “Seller”) and Blueberry Bridal Boutique 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 625 Crosswind Boulevard, Kennewick, Benton County, Washington, as otherwise shown on **Exhibit A** attached hereto (the “Property”).

Tax Parcel No.: 132991BP5674018

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 \$74,340.00, 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 therefrom (the “Feasibility Study Period”), Purchaser may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its



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

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

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

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

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

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

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

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

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

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

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

## 5. REPRESENTATIONS AND WARRANTIES.

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

Notwithstanding the forgoing, Seller makes the following affirmative representations:

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

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

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

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

7. **CLOSING.**

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

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

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

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

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

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

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

## 8. **REPURCHASE OPTION.**

- 8.1 **Obligation to Construct a 4,128 sf building.** The Parties agree that the Purchaser will construct a retail boutique specializing in wedding attire (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:**

\_\_\_\_\_  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Email: \_\_\_\_\_

**Seller:**

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

**With copy to:**

**Witherspoon Brajcich McPhee, PLLC**  
**601 W. Main Ave, Suite 1400**  
**Spokane, WA 99201**  
Attn: Taud Hume, Port Counsel  
Phone No.: (509) 455-9077



Email: [thume@workwith.com](mailto:thume@workwith.com)

**10. MISCELLANEOUS.**

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

10.8 Amendments. This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.

10.9 Broker Compensation. Except for \_\_\_\_\_ from \_\_\_\_\_, who is acting as Purchaser's broker, neither Party has had any contact or dealings regarding said property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplating this Agreement.

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

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

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

10.10 Obligations to Survive Closing. The obligations contained herein shall survive Closing.

10.11 Termination. Unless otherwise agreed between the Parties, this Agreement shall terminate unless signed by Purchaser and returned to Seller before 5:00 p.m. the 3<sup>rd</sup> business day following the Port of Kennewick's next scheduled Commission meeting.

10.12 Force Majeure. Except as otherwise specifically provided in this Agreement, in the event either Party is delayed or prevented from performing any of its respective obligations under this Agreement by reason of acts of God, governmental order or requirement, epidemic, pandemic, fire, floods, strikes, cyber attack, or due to any other cause beyond the reasonable control of such Party, then the time period for performance such obligations shall be extended for the period of such delay.

10.13 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

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

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

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

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

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

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

Approved:

Approved as to form:

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

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

**PURCHASER: BLUEBERRY BRIDAL BOUTIQUE LLC**

By: \_\_\_\_\_  
Amber Keller

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

**ACKNOWLEDGEMENTS**

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me Amber Keller to me known to be the sole proprietor of Blueberry Bridal Boutique LLC, a limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

**EXHIBIT A**

*(Legal Description of the Property)*

**BINDING SITE PLAN #5674, LOT 18. 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 \_\_\_\_\_ (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. 132991BP5674018 (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 its 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:** \_\_\_\_\_

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

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_ of \_\_\_\_\_, a limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

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

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

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

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

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

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

**ATTACHMENT 1**

*(Description of Parking Easement Area)*

**EXHIBIT E**

*(Use Easement Agreement - Trash Receptacle)*

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

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

## USE EASEMENT AGREEMENT

(Trash Receptacle)

**THIS USE EASEMENT AGREEMENT** (this "Agreement") is made effective as of this \_\_\_ day of \_\_\_\_\_, 2024, by and between PORT OF KENNEWICK, a Washington municipal corporation (as "Grantor") and \_\_\_\_\_ (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. 132991BP5674018 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: BLUEBERRY BRIDAL BOUTIQUE LLC**

By: \_\_\_\_\_  
Amber Keller

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared before me Amber Keller, 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 625 Crosswind Blvd, Kennewick, Benton County, Washington, and legally described as:

**BINDING SITE PLAN #5674, LOT 18. RECORDED IN VOLUME 1 OF SURVEYS AT PAGE 5674, RECORDS OF BENTON COUNTY, WASHINGTON. AF#2022-020339, 06/16/2022. SEE SURVEY 5674**

(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:

- 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.
- 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: AMBER KELLER; BLUEBERRY BRIDAL BOUTIQUE LLC**

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

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

**LICENSEE :** \_\_\_\_\_  
(contractor, subcontractor, agent, invitee or licensee)

The signatory below (i) attests that he or she has the authority to enter into this Agreement and to bind his/her company to the terms and conditions contained herein, and (ii) understands that said terms and conditions apply to their company as a "Licensee," as that term is used herein.

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

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

**ATTACHMENT 1**

(Description of License Area)







## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** September 24, 2024

**AGENDA ITEM:** Vista Field Purchase & Sale Agreement – Lot 31 – 6737 W. Azure Drive - Resolution 2024-19

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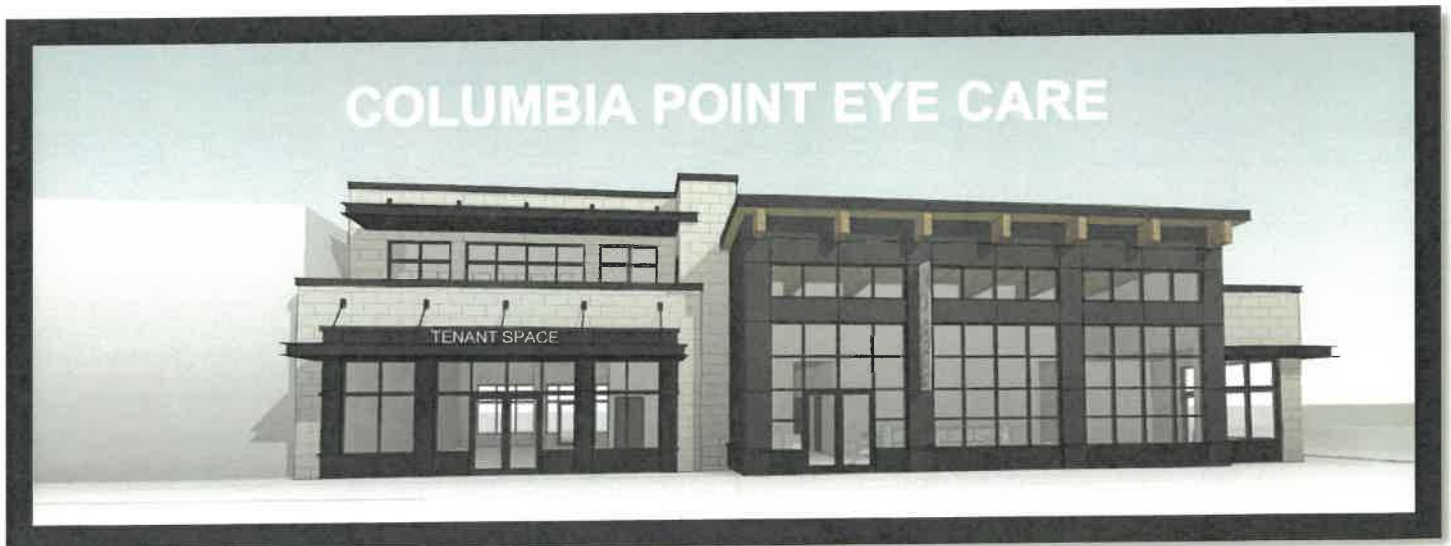
**I. REFERENCE(S):**

Letter of Intent dated June 27, 2024

**II. FINANCIAL IMPACT:** Revenue \$143,346.00

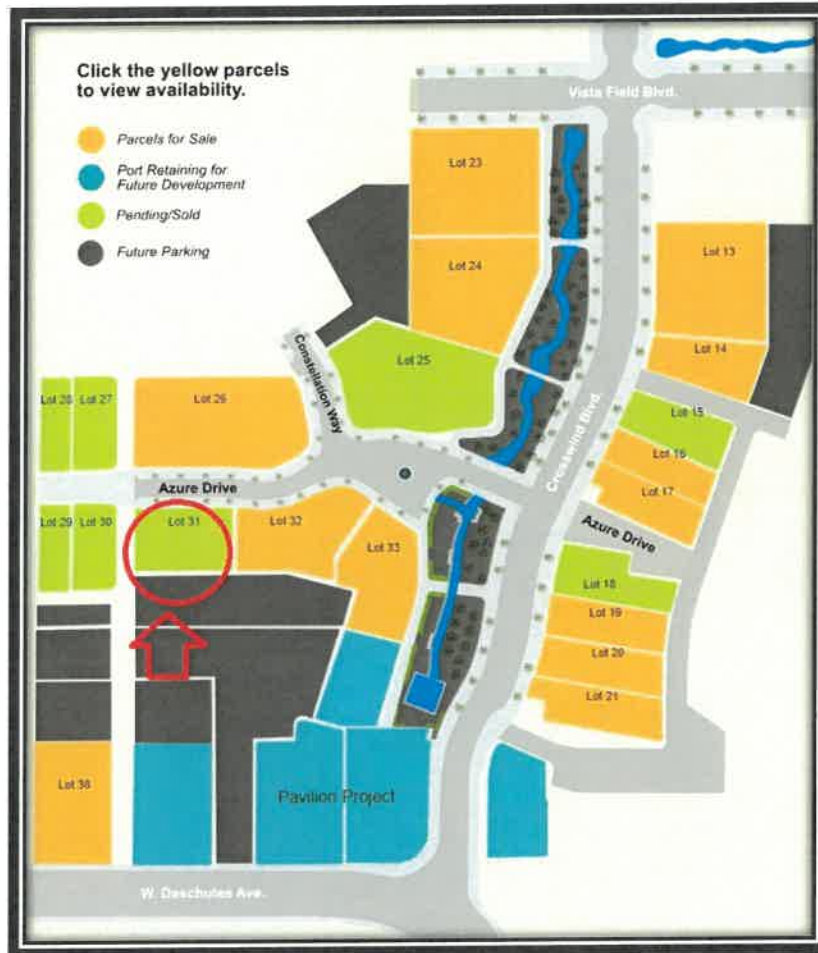
**III. DISCUSSION:**

Dr. Royce Barney and Dr. Brandon Furness submitted their letter of intent to the port on June 27, 2024, under Cantley Vision Inc, PS. Their proposal is to construct a 7,000 square foot building on lot 31 in Vista Field for their medical practice Columbia Point Eye Care Clinic and leasable space to a potential future tenant.



On July 9, 2024, the port commission approved a '90-Day Right to Negotiate' period with Cantley Vision Inc, PS.

Lot 31 has frontage on three sides: Azure Drive, the pedestrian walkway to the west and joint use parking to the south.



Dr. Furness and Dr. Barney are excited to be part of Vista Field and are ready to accelerate construction. They have selected Hummel Construction and Development Group as their builder and received a construction pre-approval letter from Community First Bank.

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

Medical is a desired use in Vista Field and Lot 31 creates a natural transition between future residential development and activity envired closer to the water feature and open-air pavilions.

Purchase and sale agreement highlights:

- Vista Field Lot 31 – 6737 W. Azure Drive
- 6,826 square foot parcel
- 7,000 square foot medical and retail building
- Uses: Medical, boutique optical retail, leasable space
- Price: \$143,346.00 fixed price for parcel.
- Effective date = Date PSA is approved by commissioners
- Closing: 90 days (60 days feasibility period, 30 days document preparation)
- Time to completion of project = 24 months from effective date of PSA
- PSA to be signed by Dr. Royce Barney and Dr. Brandon Furness as owners of Cantley Vision Inc, PS dba Columbia Point Eye Care Clinic.
- 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 2024-19 approving a purchase and sale agreement with Cantley Vision Clinic Inc PS for the purchase of lot 31 in the port's Vista Field redevelopment project; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.***

***PORT OF KENNEWICK***

**RESOLUTION No. 2024-19**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK TO  
APPROVE A PURCHASE AND SALE AGREEMENT  
WITH CANTLEY VISION INC, PS***

**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 7,000 square foot building on Lot 31 within the first phase of Vista Field redevelopment from Dr. Brandon Furness and Dr. Royce Barney of Cantley Vision Inc, PS; and

**WHEREAS**, Cantley Vision Inc, PS (Purchaser), has offered to purchase approximately 6,826 square feet of the area graphically depicted on “*Exhibit A*” as 6737 W. Azure Drive at the Port of Kennewick’s Vista Field redevelopment project in Kennewick, Washington from the Port of Kennewick (Seller) for \$143,346.00; 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 Cantley Vision Inc, PS for lot 31 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 24th day of September, 2024.

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

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

SKIP NOVAKOVICH, President

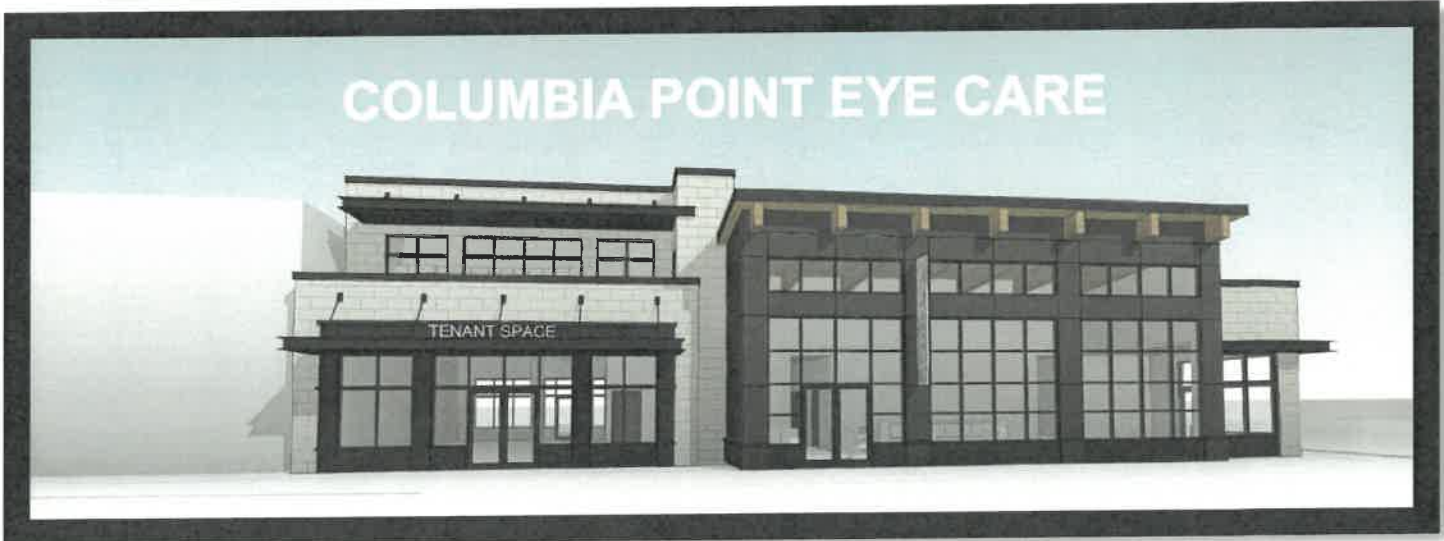
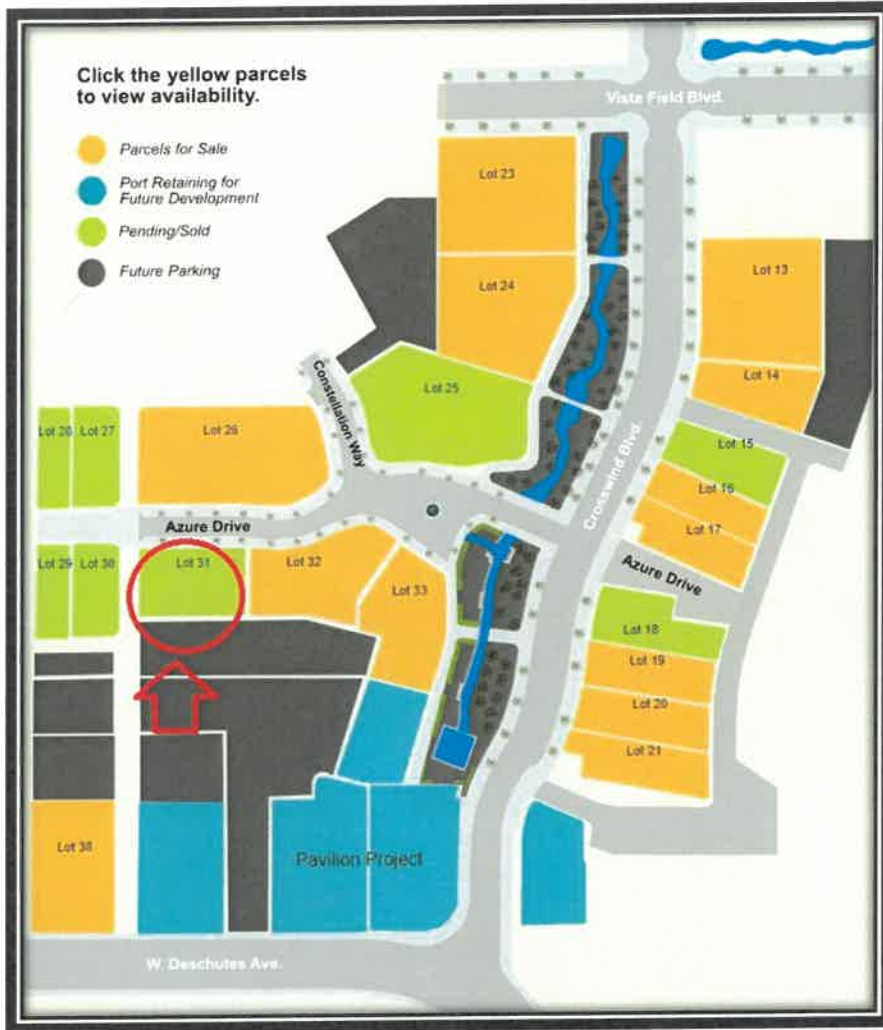
By: \_\_\_\_\_

KENNETH HOHENBERG, Vice President

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

THOMAS MOAK, Secretary

**EXHIBIT A**





6119 Burden Blvd., Suite C  
Pasco WA, 99301  
Office: 509.416.6319  
contact@lybbertfielding.com

EXHIBIT A

June 27, 2024

Port of Kennewick  
C/O Amber Hanchette

RE: **Letter of Intent (LOI)** for Lot 31 of Vista Field Phase 1

Hello Amber,

The purpose of this letter is to express the interest of Cantley Vision Inc, PS ("Buyer") and/or it's entities, to purchase from the Port of Kennewick ("Seller") the property commonly known as Lot 31 of Vista Field Phase 1, with a Parcel ID of 132991BP5674031, and located in the City of Kennewick in Benton County, Washington and consisting of +/- 6,826 square feet of land and all improvements, if any (the "Property").

Attachments to this LOI:

- Building Inspiration Images (as a reference for the "look-and-feel" that Buyers are trying to achieve)
- References
- Builder Bio
- Letter of Credit

Immediately after Closing of this potential transaction, Buyer intends to construct, own, and operate a vision center and optical boutique retail location on the Property, as well as lease out a portion of the building. Buyer expects that the building will be completed no later than 24 months after the Port of Kennewick Commissioners' approval of a purchase and sale agreement.

More specifically:

Buyer intends to construct a building that is approximately 6,500 square feet. Buyer intends to operate its business out of +/- 3,500 square feet and lease out the remaining +/- 3,000 square feet as office and/or retail space. Preliminarily, Buyer's thoughts are to construct a building that is partially two story and partially one story.

Buyer has engaged Kyle Lepper with LPR Architecture in Richland, WA as its architect for development and construction of the Property.

Buyer currently owns and operates its business under the name Columbia Point Vision and at the following two locations: 7015 Deschutes Ave Suite A in Kennewick, and 3200 Duportail St Suite 101 in Richland.

Buyer's services to the general public include optometric services; eye care products including eyeglasses, specialty eyewear, frames; and contact lenses.

You can view Buyer's website at: [www.columbiapointvision.com](http://www.columbiapointvision.com).

Buyer proposes that the Purchase and Sale Agreement include the following terms, together with such other terms as are customary and as are approved by Seller and Buyer in their sole discretion:

**1. Purchase Price**

\$143,346.00

**2. Payment Terms**

Cash at Closing.

**3. Closing Costs**

Both parties agree to pay any and all closing costs that are customary for this type of transaction, including but not limited to:

Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable to any extended coverage or endorsements requested by Buyer, and the cost of any survey required in connection with the same.

Seller and Buyer shall each pay one-half of the escrow fees.

Seller shall pay the real estate excise taxes.

Seller shall pay Lybbert Fielding Real Estate LLC a commission at Closing equal to 4% of the Purchase Price.

Real and personal property taxes and assessments shall be pro-rated as of Closing.

**4. Parking**

Buyer needs 20 parking stalls.

**5. Litigation and/or Claims**





Neither Cantley Vision Inc, PS nor its owners Royce Barney and Brandon Furness is currently or has in the last 10 years been named a party to any litigation and/or a claim.

6. Other Terms

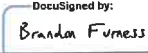
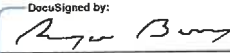
Additional terms are to be negotiated during Buyer’s 90 day right to negotiate after Commissioner approval, including earnest money, feasibility period, escrow company, title company, closing date, and other customary terms.

The parties agree they will not be bound to any of the terms above unless they formally prepare and sign a mutually acceptable Purchase and Sale Agreement and deliver a signed copy to one another. Execution of this letter does not obligate a party to execute a Purchase and Sale Agreement.

Respectfully,

Cody Fielding  
Lybbert Fielding Real Estate

Signed by Buyer:

 <small>DocuSigned by: Brandon Furness 18701DD88763401...</small>	Brandon Furness	06/27/2024
Signature	Name Printed	Date
 <small>DocuSigned by: Royce Barney 2C865EB006D7480...</small>	Royce Barney	06/27/2024
Signature	Name Printed	Date

Signed by Seller:

_____ Signature	_____ Name Printed	_____ Date
--------------------	-----------------------	---------------



## COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is made as of this 24th day of September, 2024 (the “Effective Date”), by and between the PORT OF KENNEWICK, a Washington municipal corporation (as “Seller”) and CANTLEY VISION INC., PS a Washington professional services corporation (as “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 6747 W. Azure Drive, Kennewick, WA 99336, Kennewick, Benton County, Washington, as otherwise shown on **Exhibit A** attached hereto (the “Property”).

Tax Parcel No.: 132991BP5674031

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 offsite improvements.

### 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 \$143,346.00, plus or minus adjustments and credits as provided herein.
- 2.2 Earnest Money. Receipt is hereby acknowledged of \$7,167.30 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 therefrom (the “Feasibility Study Period”), Purchaser may conduct a review with respect to the Property and satisfy itself with respect to the condition of and other matters related to the Property and its

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

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

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

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

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

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

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

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

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

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

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

## 5. REPRESENTATIONS AND WARRANTIES.

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

Notwithstanding the forgoing, Seller makes the following affirmative representations:

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

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

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

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

7. **CLOSING.**

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

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

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

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

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

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



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

## 8. REPURCHASE OPTION.

- 8.1 Obligation to Construct. The Parties agree that the Purchaser will construct a 7,000 square foot medical office building inclusive of 1,500 square feet of leasable space (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:

**Purchasers:** Dr. Brandon Furness and Dr. Royce Barney  
**c/o Columbia Point Eye Care Clinic**

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](mailto:amber@portofkennewick.org)

**With copy to:** **Witherspoon Brajcich McPhee, PLLC**  
**601 W. Main Ave, Suite 1400**  
**Spokane, WA 99201**  
Attn: Taudd Hume, Port Counsel  
Phone No.: (509) 455-9077

Email: [thume@workwith.com](mailto:thume@workwith.com)

**10. MISCELLANEOUS.**

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

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

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

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

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

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

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

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

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

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

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

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

Approved: ~

Approved as to form:

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

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

**PURCHASER: CANTLEY VISION INC., PS,**  
a Washington professional service corporation

By: \_\_\_\_\_  
Dr. Royce Barney

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

By: \_\_\_\_\_  
Dr. Brandon Furness

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

**ACKNOWLEDGEMENTS**

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Dr. Royce Barney**, to me known to be the \_\_\_\_\_ of **Cantley Vision Inc., PS**, the Washington professional service corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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





**EXHIBIT A**

*(Legal Description of the Property)*

**BINDING SITE PLAN #5674, LOT 31. 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:**

**DRAFT**

## **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 \_\_\_\_\_ (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. 132991BP5674031 (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 its 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: CANTLEY VISION INC., PS,**  
a Washington professional service corporation

By: \_\_\_\_\_  
Dr. Royce Barney

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

By: \_\_\_\_\_  
Dr. Brandon Furness

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Dr. Royce Barney**, to me known to be the \_\_\_\_\_ of **Cantley Vision Inc., PS**, the Washington professional service corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Dr. Brandon Furness** to me known to be the \_\_\_\_\_ of **Cantley Vision Inc., PS**, the Washington professional service corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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



**ATTACHMENT 1**

*(Description of Parking Easement Area)*

**EXHIBIT E**

*(Use Easement Agreement – Offsite Improvements)*

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**

(Offsite Improvements)

**DRAFT**

**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 \_\_\_\_\_ (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. 132991BP5674031 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: CANTLEY VISION INC., PS,**  
a Washington professional service corporation

By: \_\_\_\_\_  
Dr. Royce Barney

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

By: \_\_\_\_\_  
Dr. Brandon Furness

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Dr. Royce Barney**, to me known to be the \_\_\_\_\_ of **Cantley Vision Inc., PS**, the Washington professional service corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

State of Washington )  
 )ss  
County of Benton )

On this day personally appeared before me **Dr. Brandon Furness** to me known to be the \_\_\_\_\_ of **Cantley Vision Inc., PS**, the Washington professional service corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

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

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

STATE OF WASHINGTON )

: ss

County of \_\_\_\_\_ )

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

**DRAFT**

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:

**BINDING SITE PLAN #5674, LOT 31. RECORDED IN VOLUME 1 OF SURVEYS AT PAGE 5674, RECORDS OF BENTON COUNTY, WASHINGTON. AF#2022-020339, 06/16/2022. SEE SURVEY 5674**

(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

**PURCHASER: CANTLEY VISION INC., PS,**  
a Washington professional service corporation

By: \_\_\_\_\_  
Dr. Royce Barney

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

By: \_\_\_\_\_  
Dr. Brandon Furness

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

**ATTACHMENT 1**

(Description of License Area)





## AGENDA REPORT

**TO:** Port Commission

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

**MEETING DATE:** September 24, 2024

**AGENDA ITEM:** VFDF A&B Façade Improvements (415 N. Roosevelt);  
Construction Contract with G2 Commercial Construction Inc.

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- I. REFERENCE(S):** Resolution 2024-20; Bid Tabulation, letter of recommendation from Meier Architect - Engineering (Architect)
- II. FISCAL IMPACT:** \$554,377.00 (\$183,377.00 Base Bid + \$371,000 Alternate 1) plus applicable tax)

**III. DISCUSSION:**

The port owns two buildings at 415 N. Roosevelt in Kennewick.

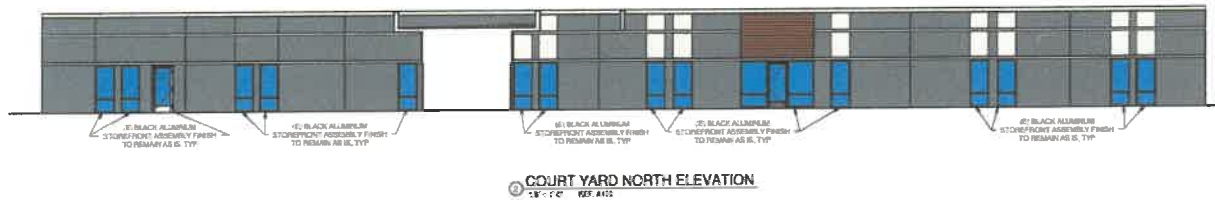
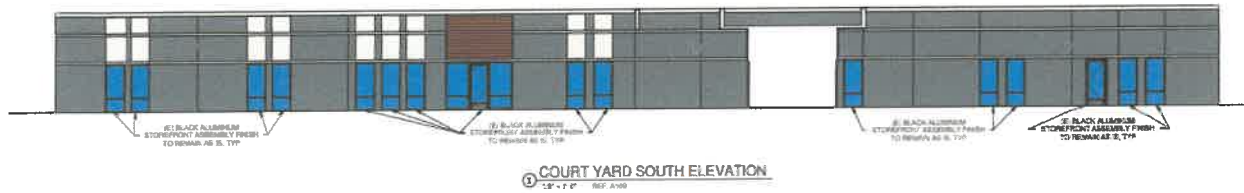
- Building A is approximately 29,500 square feet built in 1990.
- Building B is approximately 14,400 square feet built in 1998.

Both buildings are single story with a flat roof and stucco exterior finish. Over time, rain and melting snow have caused damage to the stucco exteriors while settling and sun damage have cracked portions of the stucco.

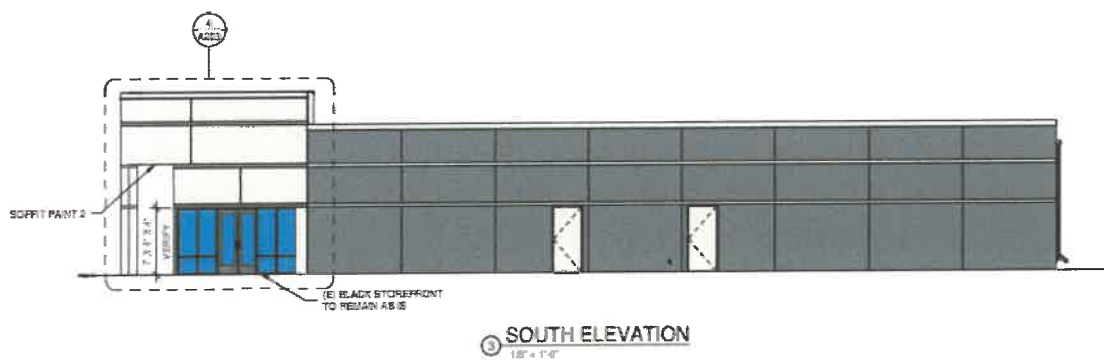
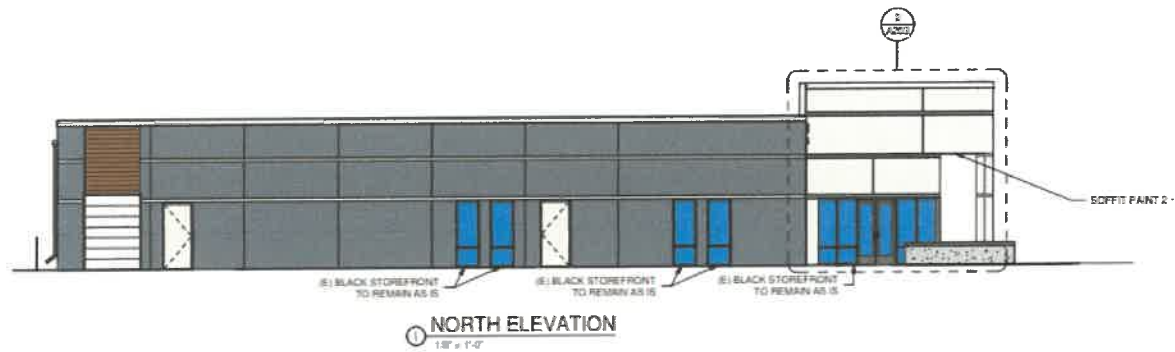
Project elements include:

- ✓ Repair and replacement of damaged stucco on Building A;
- ✓ Remove beam to entrance of Building A courtyard for updated appearance;
- ✓ Add downspouts to existing scuppers on Building A for better drainage;
- ✓ Replace damaged stucco on Building B;
- ✓ Add downspouts to existing scuppers on Building B for better drainage;
- ✓ Repair damaged soffits on Building B;
- ✓ Metal panels over entry doors for added interest;
- ✓ Paint all exterior surfaces of both Building A & Building B.

## BUILDING A ELEVATIONS:



## BUILDING B ELEVATIONS:



Due to concerns of escalating costs the plans and specifications were re-formatted as a base bid with an alternate. The base bid focused on repairs to Building A while alternate 1 addresses repair and stucco replacement to Building B. This would allow the Commission to consider and possibly approve portions of the project that were within budget and avoid a



significant financial over commitment or rejection and delay decision that could result from an “all or nothing” format.

The Port properly advertised this project for bid and received nine [9] bids before the 2:00 p.m. September 12, 2024, deadline. One contractor, G2 Commercial Construction Inc. was the low bidder on the Base Bid and the Base Bid plus Alternate 1.

**Base Bid:** G2 Commercial Construction: \$183,000.00

**Base Bid + Alternate 1:** G2 Commercial Construction; 183,000.00 + \$371,000.00 = \$554,377.00

Architects estimate for this project Base plus Alternate - \$440,000.00.

Budget for this project - \$500,000.00

Due to the considerable repairs needed for this project and the likelihood that future bids would yield higher costs, port staff recommend moving forward with the necessary repairs and a reallocation of funds within the current capital budget.

Review and acceptance of this bid by the Commission is required prior to proceeding with this project. As drafted, the motion included in this report and the attached resolution would effectively authorize award of the Base Bid and Alternative 1.

#### **IV. ACTION REQUESTED OF COMMISSION:**

***Motion:*** I move approval of Resolution 2024-20, authorizing the Port’s Chief Executive Officer to execute a contract with G2 Commercial Construction for VFDF A&B Façade Improvements including Alternate 1, for the sum of \$554,377.00, plus applicable tax.

## ***PORT OF KENNEWICK***

### **RESOLUTION No. 2024-20**

#### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ACCEPTING AND AWARDING A CONSTRUCTION CONTRACT FOR VFDF A&B FAÇADE IMPROVEMENTS***

**WHEREAS**, a request for bids for repair, updating and painting at the port's Vista Field Development Facilities (VFDF) A & B, 415 N. Roosevelt was properly advertised with the approved plans and specifications being made available to prospective bidders; and

**WHEREAS**, construction plans and specifications were presented to the bidder in a base bid and alternate bid format; and

**WHEREAS**, construction bids have been received and staff and the project architect have certified that the bids received are in compliance with the plans and specifications; and

**WHEREAS**, the staff and the project architect have certified that the bidder G2 Commercial Construction Inc. provided a base bid in the amount of \$183,000.00, plus applicable tax which includes repair of stucco, new drainage, exterior updates and paint and that such bid is in compliance with the plans and specifications; and

**WHEREAS**, the staff and the project architect have certified that the bidder G2 Commercial Construction Inc. also provided a bid in the amount of \$371,000.00, plus applicable tax for Bid Alternate 1 work which includes replacement of damaged stucco panels, new drainage, exterior updates and paint and that such bid is in compliance with the plans and specifications; and

**WHEREAS**, the staff and the project architect have certified that the low bidder for the work including the base bid and Alternate 1 is G2 Commercial Construction Inc. in the amount of \$554,377.00, plus applicable tax.

**NOW THEREFORE, BE IT RESOLVED** that the Port of Kennewick Commission does hereby accept the base bid of G2 Commercial Construction Inc. for the necessary exterior repair and renovations to VFDF A&B at 415 N. Roosevelt, Kennewick in the amount of \$554,377.00, plus applicable tax and hereby awards the construction contract to said bidder and that the CEO is further authorized to proceed with all necessary procedures required to complete construction of the project.

**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 24<sup>th</sup> day of September, 2024.

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

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

SKIP NOVAKOVICH, President

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

KENNETH HOHENBERG, Vice President

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

THOMAS MOAK, Secretary

# BID TABULATION

## Port of Kennewick-VFDF A&B FAÇADE IMPROVEMENT

Bid Opening 2:00pm Thursday, September 12, 2024 at 350 Clover Island Drive, Suite 200

*Port Commission must approve contract of this scale*

Contact: Amber Handhete (509) 586-1186  
[Amber@portofkennewick.org](mailto:Amber@portofkennewick.org)

#	BIDDER		Addendum			Bid Bond	Non-Collusion	Anti-Discrimination	Wage Law Compliance	Letter of Qualifications	Subcontractor List <i>(within 1 hour)</i>	BASE	BID AMOUNT	
			1	2	3								ALT. 1	BASE + ALT. 1
7	G2 Construction	Kennewick	X	X	X	X	X	X	X	X	X	\$183,377.00	\$371,000.00	\$554,377.00
1	Hummel Construction	Kennewick	X	X	X	X	X	X	X	X	X	\$208,882.59	\$359,737.74	\$568,620.33
3	Booth & Sons Construction	Richland	X	X	X	X	X	X	X	X	X	\$265,550.00	\$324,800.00	\$590,350.00
6	CMR General Contractor	Pasco	X	X	X	X	X	X	X	X	X	\$292,128.00	\$331,514.00	\$623,642.00
8	Banlin Construction	Kennewick	X	X	X	X	X	X	X	X	X	\$284,000.00	\$369,000.00	\$653,000.00
2	Vincent Brothers LLP	Pasco	X	X	X	X	X	X	X	X	X	\$383,160.00	\$325,322.00	\$708,482.00
9	S&K Mountain Construction	Walla Walla	X	X	X	X	X	X	X	X	X	\$380,000.00	\$565,400.00	\$945,400.00

### INCOMPLETE BIDS

4	Alpha Developers LLC	Seattle	WA	X	X	X	X	X	X	X		\$418,000.00	Not Included	\$418,000.00
5	ESF Solutions	Walla Walla	WA	X	X	X	X	X	X	X		\$497,222.00	\$575,777.00	\$1,072,999.00



September 13, 2024

Port of Kennewick  
350 Clover Island Drive  
Kennewick, WA 99336  
Attn: Ms. Amber Hanchette

Re: BID RECOMMENDATION  
415 N ROOSEVELT FAÇADE IMPROVEMENTS

Dear Ms. Hanchette:

In reviewing the bids presented yesterday for the 415 N. Roosevelt Project, I recommend that the bid by G2 Construction for both the Base Bid and Alternate No.1 in the amount of \$ 545,377.00 be accepted by the Port of Kennewick. Given the nature of the Project, I further recommend that the Port of Kennewick include a contingency fund for 10% of the value of the contract to cover unforeseen conditions.

We look forward to working with you to make this another successful Project for the Port of Kennewick.

Thank you for including Meier in this Project.

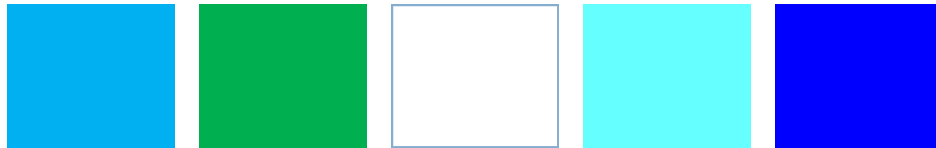
Sincerely,

Thomas Kastner, AIA  
Principal Architect  
Meier Architecture • Engineering

TPK:ram

Project No. 22-9054  
Letter No. 24-0075





## 2025-2026 WORK PLAN

Approved by Resolution 2024-xx  
October 8, 2024

350 Clover Island Drive, Suite 200  
Kennewick, WA 99336

Tel: (509) 586-1186  
Fax: (509) 582-7678

[www.PortofKennewick.org](http://www.PortofKennewick.org)

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**PROSPECTIVE VISION** ..... Page 2

**CAPITAL EXPENDITURE SUMMARY** ..... Page 3

**DISTRICT BOUNDARY MAP** ..... Page 4

**PROPERTY PORTFOLIO**

**PRIORITY PROJECTS**

Vista Field Redevelopment ..... Page 5

Kennewick Historic Waterfront District (Clover Island & Columbia Drive) ..... Page 7

**OTHER PROJECTS/PROPERTIES**

Vista Field Industrial, Oak Street, Finley & Plymouth Island ..... Page 9

**ADDITIONAL WORK PLAN PROJECTS** ..... Page 10



## PROSPECTIVE VISION

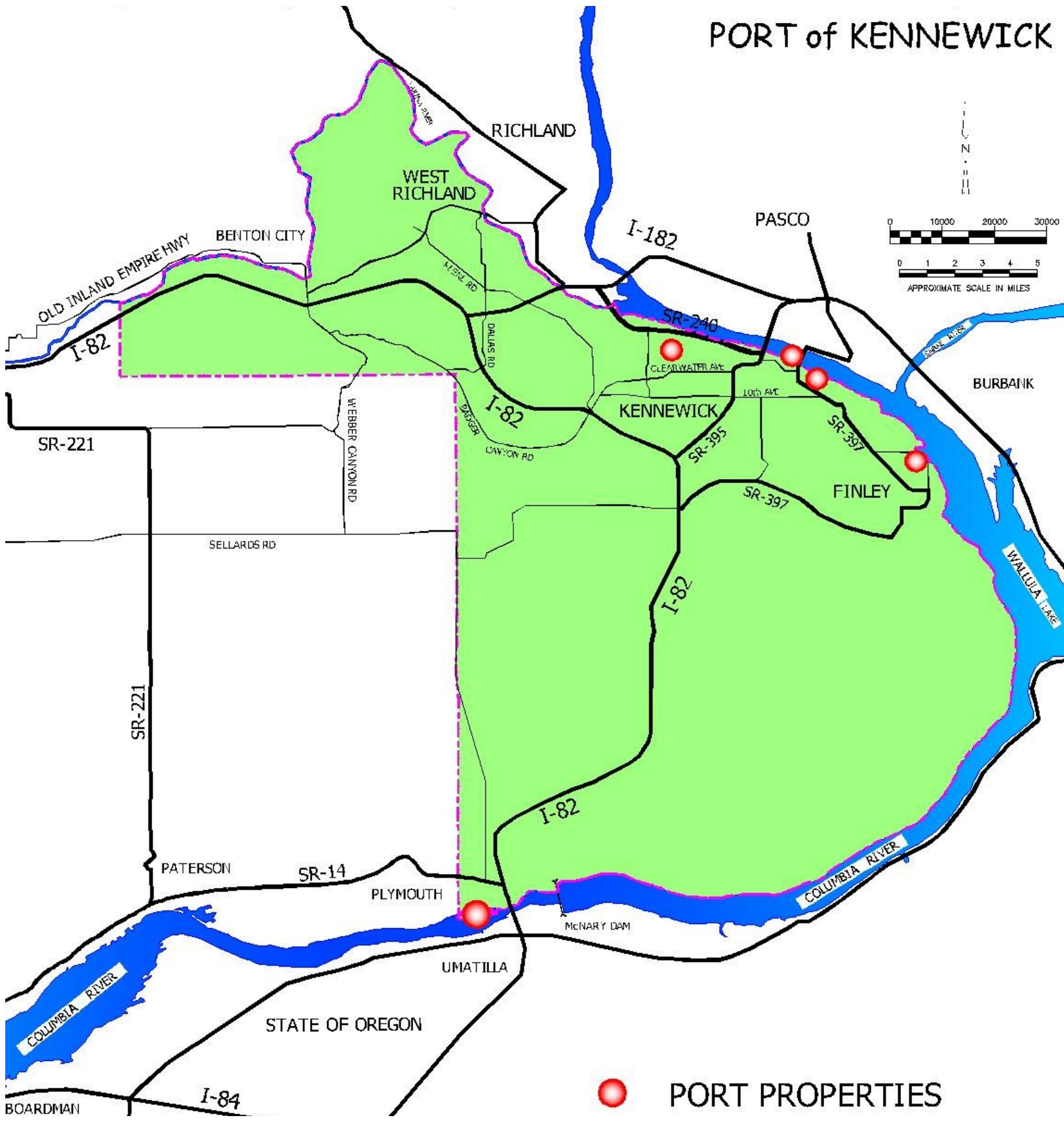
- **The Port is an economic development entity focused on redevelopment.**
- **The redevelopment role avoids duplicating private sector efforts while both invigorating areas of the district lagging in private sector investment and forging a economically sustainable development pattern.**
- **Acknowledge the enormity of the Vista Field Redevelopment project and the significance of this effort to the entire Port district and larger Tri-City area.**
- **Follow direction established by 2016 Comprehensive Scheme of Development and Harbor Improvements as amended in 2017 and 2019.**
- **Continue with Kennewick Waterfront District projects: Columbia Drive — Wine & Artisan Village and Clover Island Improvements.**
- **Pursue projects with development partners demonstrating support (match funding, political support and enthusiasm).**
- Pursue fewer projects while selecting projects with the greatest benefit to the community.
- Realize & support economic development opportunities with wine, culinary & tourism industry.
- Continue to pursue grant funding opportunities.
- Remain focused on containing operational expenses.
- A strong focus must be placed on successfully running daily Port operations.
- Remain solidly focused on the Port's core business and established priorities; not swayed by the oscillating influence of external entities.

**CAPITAL EXPENDITURE SUMMARY**

Dated: September 16, 2024

<b>2025/2026 DRAFT CAPITAL BUDGET</b>			
Vista Field	Infrastructure West Construction (BlueChart Block #1)	\$ 2,300,000	
Vista Field	Joint-Use Parking Lot Construction (Pavilions)	\$ 1,000,000	RCCF
Vista Field	Joint-Use Parking Lot Construction (Woonerf-North)	\$ 150,000	
Vista Field	Joint-Use Parking Lot Construction (Lots 23-25)	\$ 400,000	
Vista Field	Joint-Use Parking Lot Construction (Woonerf-South)	\$ 225,000	
Vista Field	Joint-Use Parking Lot Construction (Brockman)	\$ 750,000	
Vista Field	Infrastructure East Construction (BlueChart Block #2)	\$ 2,300,000	
Vista Field	Infrastructure East Street Construction (Grandridge & Vista Field Blvds.)	\$ 1,600,000	RCCF
Vista Field	Daybreak Commons Phase #1 Construction	\$ 1,500,000	
Vista Field	Team {Town Architect, Project Design}	\$ 300,000	
Vista Field [VFDF]	Exterior Building Improvements (estimated carryover)	\$ 200,000	
District-wide	Art Project/Installation	\$ 100,000	
District-wide	Opportunity Fund	\$ 125,000	
District-wide	Asset Replacement	\$ 400,000	
<b>TOTAL</b>		<b>\$ 11,350,000</b>	

# PORT of KENNEWICK



VISTA FIELD REDEVELOPMENT

- 103+ Acres Combined
- Zoning/Utilities: UMU (Urban Mixed Use) with all Municipal Services

STRENGTHS

- Centrally located in the Tri-Cities, surrounded by vibrant commercial district (Columbia Center Mall) and adjacent to the Three Rivers Entertainment District (Toyota Center Coliseum, Three Rivers Convention Center and Tri-Cities Business & Visitor Center)
- Located within “Opportunity Zone” per 2017 Tax Cuts & Jobs Act

CHALLENGES

- \* Undertaking massive redevelopment effort while balancing district-wide objectives
- Limited financial resources
- Establishing a new land use and development paradigm in the community

**SUGGESTED WORK & PROPERTY MANAGEMENT PLAN**

- Infrastructure West Construction (BlueChart Block #1) **\$2,300,000**®
- Joint-Use Parking Lot Construction (Pavilions) **\$1,000,000** {RCCF}
- Joint-Use Parking Lot Construction (Woonerf-North) **\$150,000**
- Joint-Use Parking Lot Construction (Lot 23-25) **\$400,000**
- Joint-Use Parking Lot Construction (Woonerf-South) **\$225,000**
- Joint-Use Parking Lot Construction (Brockman) **\$750,000**
- Infrastructure East Construction (BlueChart Block #1) **\$2,300,000**®
- Infrastructure Grandridge Blvd. Construction **\$1,600,000** {RCCF} ®
- Daybreak Commons Phase #1 Construction **\$1,500,000**®
- Vista Field Team (supporting marketing efforts) - **\$300,000** ®

**Remain true to the community’s vision remembering the initial steps, whether positive or negative, set the tone for the entire project.**

**Patience during the next two years coupled with strategic decision making will yield positive results for decades.**

- **Provide Support & Oversight to Previously Approved Land Sales**
- **Market properties through RFP process & review proposals through the Collaborative Design Process** ®

*Existing/Pending Contractual Obligation*  
*Support Previously Expressed*  
 ® **Revenue Generation Potential**



## KENNEWICK HISTORIC WATERFRONT DISTRICT (Clover Island & Columbia Drive)

- Clover Island 16 Acres; Columbia Drive 15.26 acres
- Zoning/Utilities: Clover Island CM (Commercial Marina); Columbia Drive UMU (Urban

### STRENGTHS

- Unique waterfront property with tourism opportunities - lighthouse, gateway, marina, public plazas, shoreline trails, public art amenities, wine tasting rooms & food truck cluster with commercial & recreational opportunities
- Located within “Opportunity Zone” per 2017 Tax Cuts & Jobs Act ……

### CHALLENGES

- ✱ Balancing focus on both Kennewick waterfront and Vista Field redevelopment priority projects
- Surrounded by blighted neighborhoods consisting of residential, low-income, commercial-general and light industrial business-use properties
- Inconsistent design development standards within the surrounding area

### SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

#### CLOVER ISLAND

- Respond to private sector development inquiries on N.W. corner and Cedars West parcels (land lease) ®
- Hold parcel adjacent Gathering Place to accommodate/support development of north shoreline parcels.

#### COLUMBIA DRIVE

- Respond to private sector development inquiries on Columbia Gardens, Willows & Cable Greens parcels (sale or lease) ®

*Existing /Pending Contractual Obligation*  
*Support Previously Expressed*  
 ® ***Revenue Generation Potential***



**VISTA FIELD — VFDF**

**OAK STREET**



**FINLEY**  
(Twin Tracks & Hedges Lagoon)

**PLYMOUTH ISLAND**



**SUGGESTED WORK & PROPERTY MANAGEMENT PLAN**

- VFDF buildings A & B exterior improvements (estimated carryover)- \$200,000 ®
- **Market available VFDF and Oak Street building space and respond to private sector development inquiries on Oak Street parcels not identified for retention in Comprehensive Scheme ®**
- **Hold Hedges lagoon as stewards in recognition of the Port's MOU w/CTUIR and Pursue CTUIR inquiry regarding transfer of Plymouth island to CTUIR**

*Existing/Pending Contractual Obligation*  
*Support Previously Expressed*  
 ® **Revenue Generation Potential**



**DISTRICT-WIDE  
WORK PLAN PROJECTS**

**SUGGESTED WORK PLAN**

- Remain focused on the day-to-day efforts to operate a successful Port District
- Complete projects authorized in 2023-2024 Budget
- Pursue grant funding as appropriate** ®
- Port asset replacement program (building upkeep & annual maintenance) - \$400,000** ®
- Opportunity fund for yet to be identified small projects (either Port or outside agency) - \$125,000** *{of which \$25,000 committed to Cable Bridge Lighting effort}* [potential ® dependent upon project(s) selected]
- Support Artwork Installation - **\$100,000**
- Pursue water rights transfer from City of West Richland to Benton County (Fairgrounds) and Port properties (Vista Field)
- Due to favorable terms given to the City of West Richland in the Tri-City Raceway land sale, involvement in West Richland will be limited to observations and non-financial support when consistent with Port’s sprawl avoidance philosophy
- Continue strengthening governmental relationships with CTUIR
- Continue strengthening governmental relationships with jurisdictional partners: City of Kennewick, City of Richland, City of West Richland, City of Benton City and Benton County

	<p><u>Existing/Pending Contractual Obligation</u>  <u>Support Previously Expressed</u>                  ® <b>Revenue Generation Potential</b></p>
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