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

To participate by telephone, please call in at: <u>1-877-309-2073</u> Access Code: 505-107-741 Or, join on-line at the following link: <u>https://meet.goto.com/505107741</u>

AGENDA

Port of Kennewick Regular Commission Business Meeting

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

June 10, 2025 2:00 p.m.

- I. CALL TO ORDER
- II. ANNOUNCEMENTS AND ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. PUBLIC COMMENT (Please state your name and address for the public record)
- V. CONSENT AGENDA
 - A. Approval of Direct Deposit and ePayments May 16, 2025
 - B. Approval of Warrant Register Dated May 23, 2025
 - C. Approval of Regular Commission Meeting Minutes May 13, 2025
 - D. Approval of Direct Deposit and ePayments June 3, 2025
 - E. Approval of Warrant Register Dated June 10, 2025
 - F. Approval of First Amendment to the Purchase and Sale Agreement with BlueChart; Resolution 2025-13

VI. PRESENTATION

A. Vista Field Daybreak Commons, Justin Weathermon and Joshua Tripp of Place Landscape Architecture (LARRY)

VII. REPORTS, COMMENTS AND DISCUSSION ITEMS

- A. Kennewick Waterfront
 - 1. Clover Island Drive Emergency Project Update (TIM)
- B. Oak Street
 - 1. Oak Street Fire Reconstruction Project Update (LARRY)
- C. CEO Report (if needed) (TIM)
- D. Commission Meetings (formal and informal meetings with groups or individuals)
- E. Non-Scheduled Items (LISA/BRIDGETTE//NICK/AMBER/LARRY/MICHAEL/CAROLYN/TIM/KEN/TOM/SKIP)
- VIII. PUBLIC COMMENT (Please state your name and address for the public record)
- IX. ADJOURNMENT



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

MAY 13, 2025 MINUTES

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

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

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Skip Novakovich, President

Kenneth Hohenberg, Vice President

Thomas Moak, Secretary

Staff Members: Tim Arntzen, Chief Executive Officer

Tana Bader Inglima, Deputy Chief Executive

Nick Kooiker, Deputy Chief Executive Officer/CFO Larry Peterson, Director of Planning (via telephone)

Amber Hanchette, Director of Real Estate

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

Mr. Kooiker led the Pledge of Allegiance.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated May 1, 2025 Direct Deposit and E-Payments totaling \$133,895.93
- **B.** Approval of Warrant Register Dated May 13, 2025
 Expense Fund Voucher Number 106872 through 106927 for a grand total of \$263,259.85
- C. Approval of Regular Commission Meeting Minutes April 22, 2025

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

PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Vista Field

1. Groundbreaking

Ms. Bader Inglima gave a brief report on the groundbreaking for Columbia Point Eyecare LLC at Vista Field (*Exhibit A*).

2. Residential Webpage

Ms. Hanchette stated a "Residential" tab has been added to the Port's www.vistafield.com, allowing BlueChart Homes and the Akula Group to have a presence on the Port's website.

Ms. Bader Inglima informed the Commission that there is also a "Things To Do" tab, which outlines the history of Vista Field.

B. Kennewick Waterfront

1. Sip & Savor and Columbia Gardens Events

Mr. Phongsa presented information on the first 2025 event at Columbia Gardens. Sip and Savor, hosted by Swampy's BBQ, featured a couple's steak dinner, where tickets were presold and each winery hosted the couples for dinner (*Exhibit B*).

2. Island Magazine

Ms. Bader Inglima stated a few years ago Visit Tri-Cities hosted travel writers to tour the Tri-Cities region. Clover Island was a feature by an independent journalist in *Island Magazine*. The headlined boasted "A Stunning Washington Island in the Columbia River Features a Picturesque Promenade and Waterfront Inn." Ms. Bader Inglima read an excerpt from the article (Exhibit C).

3. Columbia Gardens Wine & Artisan Village Vacancy

Ms. Hanchette reported Muret Gaston decided to not renew their tasting room lease, and plan to focus on their Red Mountain facility. Ms. Hanchette worked with Ms. Bader Inglima on marketing materials for the tasting room space and outlined the advertising plan (Exhibit D).

C. Finley Update

Ms. Hanchette gave a brief report on the Port's Finley properties (Exhibit E).

D. CEO Report

Mr. Arntzen reported on the following:

- Mr. Arntzen met with City of Kennewick City Manager Erin Erdman and Councilman Jason McShane to walk Vista Field and discuss the Development Agreement;
- Port and City staff resumed our monthly meetings to discuss ongoing projects and potential partnering opportunities;
- Mr. Bailey replaced eleven (11) trees at Vista Field;
- Mr. Arntzen met with Karl Dye, president CEO of TRIDEC to discuss the Institutional User plan;
- Yakima Federal Credit Union Board of Directors will tour Vista Field later this month;

PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

• Mr. Arntzen thanked Ms. Hanchette and Mr. Phongsa for their great presentations on Columbia Gardens and stated there are opportunities for the Port to work on small projects within the development.

E. Commissioner Meetings (formal and informal meetings with groups or individuals) Commissioners reported on their respective committee meetings.

F. Non-Scheduled Items

Mr. Kooiker stated the Port filed the 2024 Financial Report with the State Auditor's Office.

Mr. Peterson reported that substantial completion has been issued on the Oak Street Fire Reconstruction project, located at 1328 East 3rd Avenue.

Mr. Arntzen thanked Mr. Kooiker and his team for their work on the 2024 Financial Report.

Mr. Arntzen spoke with Chuck Torelli, City of Kennewick Mayor Pro Tem, briefly, regarding the Development Agreement. Mayor Pro Tem Torelli understands the value of the Development Agreement and offered to lend his support and speak with others if that would be helpful.

Commissioner Hohenberg appreciates Mr. Kooiker's attention to the details and rules and the work of the team. Commissioner Hohenberg believes it is important for the Commission to stay focused on the Work Plan and Budget, because the Port has made huge investments in Columbia Drive and Vista Field, and we have a long way to go.

Commissioner Novakovich was approached by Jim Millbauer, City of Kennewick Councilman, after the groundbreaking, and was asked if Vista Field could be used for a car show.

Mr. Arntzen believes the Commission previously determined that no events would be held at Vista Field until further notice. Mr. Arntzen will review the policies and report back at a later date.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

PORT OF KENNEWICK MAY 13, REGULAR COMMISSION MEETING

MAY 13, 2025 MINUTES

DRAFT

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 3:00 p.m.

APPROVED:	PORT of KENNEWICK BOARD of COMMISSIONERS
	Skip Novakovich, President
	Kenneth Hohenberg, Vice President
	Thomas Moak Secretary

Vista Field

Groundbreaking Event



















Sip & Savor

Hosted by Swampy's BBQ May 3, 2025



Sip & Savor

Join us for a delightful evening of fine local wine and a mouthwatering dinner which includes one select glass of wine, pomegranate salad, Tomahawk steak, baked potato, prosciutto wrapped asparagus, sourdough roll, and creme brulee. Seating at each winery is limited and preference will be filled on first-to-purchase basis. Event coordinated by Swampy's BBQ. Tickets are limited and must be purchased in advance and in person from Swampy's BBQ not later than April 23, 2025. *Please note, all steaks are cooked medium rare (no exeptions) *Please inform if you have a nut allergy (salad contains nuts)

PRE-PURCASE TICKETS \$200 PER COUPLE IMITED & NO DEFINDS

May 3, 2025 at 4:30PM

Tickets available at Swampy's BBQ 215 E Columbia Drive Kennewick, WA 99336









Sip & Savor

Columbia Gardens Wine and Artisan Village

Hosted by Swampy's BBQ & all four wineries.

24 Guests pre-purchased tickets for the event.

Dinner included wine from each winery.

Successful event, onlookers were intrigued.

Swampy's plans to host more events like this!









EXHIBIT B



















2025 Events

8 Scheduled Events hosted by Port of Kennewick. Tenants planning to host their own events at Columbia Gardens as well. We encourage collaboration among all tenants.

Bartholomew Winery

Gordon Estate Winery

Monarcha Winery

Muret-Gaston Wine Bar

Botanas Culichi

Frida's Mexican Grill

Nana's Kitchen

Bobablastic Tri-Cities



Columbia Gardens Walking Map

Will be handed out to guests during events to help guide them throughout Columbia Gardens Wine & Artisan Village.

Columbia Gardens Wine & Artisan Village





- 1. Space for Lease
- 313 E Columbia Gardens Way, Suite 120 I 509.578.6604
- 2. Gordon Estate Winery Tasting Room
- 313 E Columbia Gardens Way, Suite 110 I 509.316.8458
- Monarcha Winery
- 421 E Columbia Drive, Bldg A140 I 509.820.3993
- 4. Bartholomew Winery
- 421 E Columbia Drive, Bldg B I 206.395.8460

op >

- 5. Swampy's BBQ @swampysbbq
- Nana's Kitchen @nanaskitchen5150
- 7. Bobablastic
- @bobablastic_tricities

 8. Botanas Culichi
 @botanas_culichi
- 9. Frida's Mexican Grill
 @ fridasmexicangrill

RT &

- 10. Art Wrap
- 11. Art Wrap Murals
- 12. Art Wrap
- 13. Aspirations sculpture
- 14. Mid-Columbia Latino Heritage Mural
- 15. Rolling Mass artistic bus shelter
- 16. Mural

OTHER AMENITIES

- 17. Public Restrooms
- 18. Waterfront Walking Path

2025 Upcoming Events







Isolation Big Band

May 31st

Live Band

hosted by Bartholomew Winery

Sip & Show

June 21st

Hosted by Discount Vac & Sew in collaboration with all tenants

Sip & Sing

July 19th

In collaboration with Mid-Columbia Opera, hosted by Gordon Estate Winery

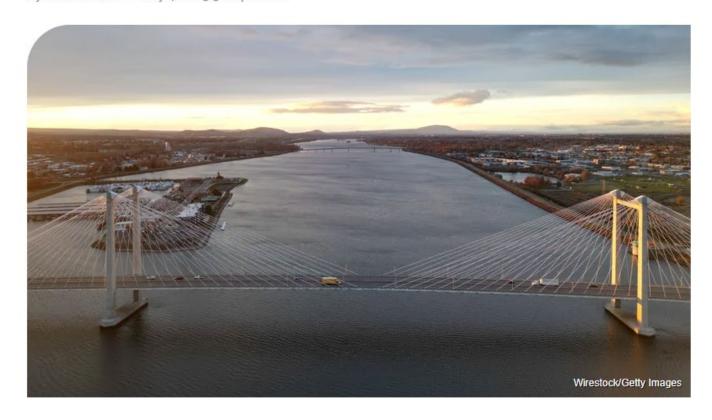


Thank you

DESTINATIONS > UNITED STATES > WASHINGTON

A Stunning Washington Island In The Columbia River Features A Picturesque Promenade And Waterfront Inn

By A. M. Graves ~ May 4, 2025 5:00 pm EST



Washington state's riverfront city, Kennewick, has become a hub for travelers looking to discover the region's wines and water sports since its founding in 1884. On the banks of the Columbia River, its up-and-coming Historic Waterfront was once a site for barge construction. Since 2005, after undergoing significant redevelopment of its shoreline, it's become a cultural destination unto itself, one that just might rival the state's other, more famous, charming maritime town, Gig Harbor. The Port of Kennewick's stunning islet, Clover Island, has been a part of this urbanization, and it's a place you won't want to miss.

With sweeping riparian vistas and everything any traveler might need to feel at home, the small but plentiful Clover Island offers a variety of sightseeing opportunities and outdoor activities to keep you entertained and exploring for several days. It's come a long way since the Lewis and Clark Expedition passed it in a canoe on their way to the Pacific Northwest along the oldest scenic route in the U.S. back in 1805. Keep reading for an overview of what to see and where to go in Clover Island, Washington.

What to do on Clover Island

Columbia Gardens Wine & Artisan Village

Tasting Room Space For Lease



WineBusiness.com WineIndustryAdvisor.com



& Port social media pages (after 5/24)

Port Website

For Lease



313 E. Columbia Gardens Way

#120

313 E. Columbia Gardens Way, #120 Kennewick, WA 99336

Space Available for Lease Columbia Gardens Wine & Artisan Village

313 E. Columbia Gardens Way #120, Kennewick, WA 99336

The available space is perfect as a tasting room for wineries, breweries or distilleries, or as a retail or specialty shop. Join Monarcha/Palencia Winery, Bartholomew Winery, Gordon Estate Winery, food trucks and pop-up vendors at Columbia Gardens Wine & Artisan Village.

Columbia Gardens is a family-friendly gathering place to sample local food and wines and meet friends. A place to explore public art, view stunning sunsets, walk, bike and discover aquatic wildlife on a scenic path alongside a peaceful nature pond.



TERMS: \$13.50 per sq. ft. annual rate +12.84% leasehold tax | Minimum 3-year lease | Deposit required

- 1,239 square feet of indoor space ideal for a tasting room (wine, spirits, cider, taproom)
- Includes water and sewer
- Spacious interior opens to a wrap-around patio with a Prep space and restroom standing bar feature and room for outdoor seating Patio overlooks a nature pond with abundant wildlife
- Adjacent to a paved pathway and Columbia River waterfront
- Pathway connects with the Clover Island Riverwalk and
- Views of the Cable Bridge to the east and sunsets to the west Pedestrian-friendly, walkable, destination development
- High-volume traffic counts on Columbia Drive
- nign-volume transc counts on Columbia Drive
 Quick access to U.S. 395 and State Routes 240 and 397







For more information or a tour contact: Amber Hanchette, Director of Real Estate (509) 586-1186 | Amber@PortofKennewick.org ColumbiaGardens.org



Digital Flyer



Columbia Gardens Wine & Artisan Village is situated between Highway 395 and State Route 397 in historic downtown Kennewick, a city in southeastern Washington state. With a population of more than 300,000, the Tri-Cities (Kennewick, Pasco, Richland) is the fourth largest metropolitan statistical area in

Columbia Gardens infrastructure and public amenities feature a loop roadway, shared parking lots, sidewalks,

landscaping, artwork and a food truck plaza. On-site utilities include sewer, electric, natural gas, water and

Centrally located between the Walla Walla and Red Mountain AVAs, there are more than 200 wineries within an hour of Columbia Gardens. And the Ste. Michelle Wine Estates WSU Wine Science Center is





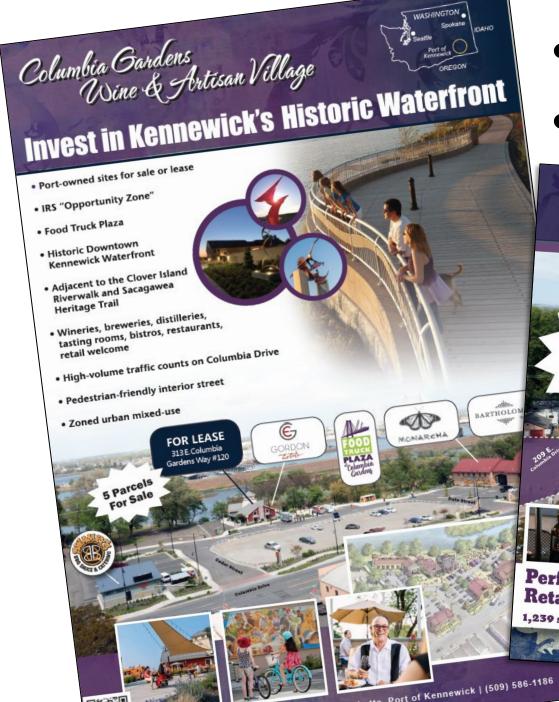
KENNEWICK

For more information or a tour contact: Amber Hanchette, Director of Real Estate (509) 586-1186 | Amber@PortofKennewick.org Columbia Gardens.org

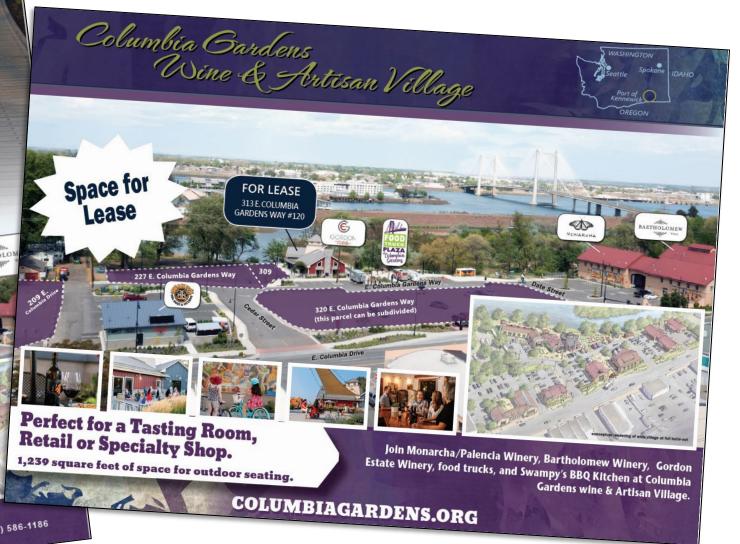








- Focus Magazine ad
- Direct Mail Postcard





Columbia Gardens Wine & Artisan Village

Digital Brochure

Columbia Gardens Wine & Artisan Village

Shovel-Ready

Parcels

for Sale

The Port and City of Kennewick are developing a wine-centered waterfront destination, where boutique production wineries can connect to a city-owned and-operated winery wastewater treatment facility. Visit ColumbiaGardens.org or click the QR code

to learn more and view available lots.

FOR LEASE

313 E. COLUMBIA

GARDENS WAY #120

southeastern Washington state. With a population of over 300,000, the Tri-Cittes (Kennewick, Pasco, Richland) is the fourth largest metropolitan statistical area in the state. More than 200 wineries are located within an hour of Columbia Gardens, and Washington State University's Wine Science Center is just minutes away. Columbia Garden's unique combination of waterfront and city-managed effluent makes this a truly remarkable setting for your business.

Located on the Columbia River in historic downtown Kennewick, the Columbia Gardens Wine & Artisan Village provides a scenic gathering place to enjoy the best of a mixed-us pedestrian-friendly, master-planned communit A space where wine producers and tasting rooms, bakeries and breweries, restaurants and shops, food trucks and public artwork ar nestled alongside a riverfront path.

Wineries can con

KENNEWICK



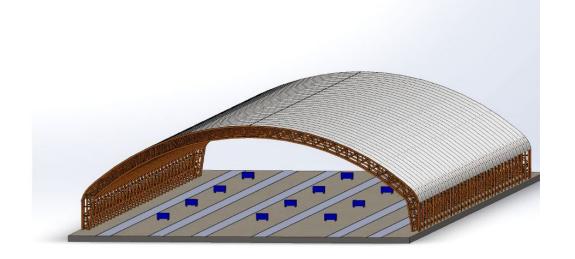


tasting room, restaurant, brewery or retail business at Columbia Gardens Wine & Artisan Village.









• 174' WIDE X 350' LONG









U-PULL-IT SUPREME TRUCK AND AUTO PARTS

See inside the new 19-acre happy place for 'car people' in the Tri-Cities By Wendy Culverwell May 7, 2025



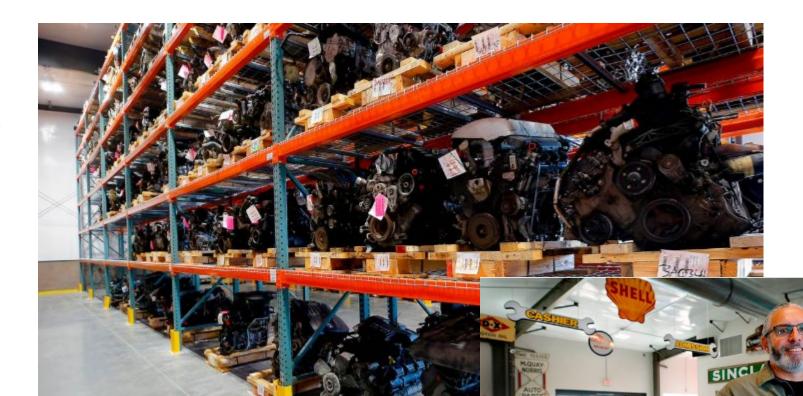
Photo Credit: Bob Brawdy



2017

PORT LAND SALE TO JMAC/PRONGHORN LLC

2025



According to Wendy Culverwell,

- U-Pull-It plans to employ 25 positions at the Finley location.
- Owner, Mark Forcum invested \$7.5 million in the new facility.

Photos By: Bob Brawdy



AGENDA REPORT

TO: Port Commission

FROM: Amber Hanchette, Director of Real Estate

MEETING DATE: June 10, 2025

AGENDA ITEM: BlueChart LLC Phase One Purchase & Sale Agreement Feasibility

Extension

I. REFERENCE(S):

Amendment #1 – Phase One 60-day Feasibility Extension Resolution 2025-13

II. DISCUSSION:

The port commission approved a Phase One purchase and sale agreement on March 25, 2025, with BlueChart LLC for the first single family home neighborhood in Vista Field. Since March, port staff, engineers and the Vista Field Town Architect team have been working with BlueChart representatives on a Development Plan for Phase One public amenities, materials, parcel layout and preliminary home elevations.

BlueChart LLC has requested a 60-day extension to refine elements of the Phase One design and allow the port team time to estimate costs for the proposed elements.

Per the purchase and sale document, both parties must agree on a course of action for an Approved Development Plan prior to expiration of the feasibility period.

III. ACTION REQUESTED OF COMMISSION:

Motion:

I move approval of Resolution 2025-13 approving a 60-day feasibility period extension to the Phase One purchase and sale agreement with BlueChart LLC; 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.

REAL ESTATE PURCHASE AND SALE AGREEMENT

(Vista Field Phase One)

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of this <u>lst</u> day of <u>April</u>, <u>2025</u> (the "Effective Date"), by and between the Port of Kennewick, a Washington municipal corporation (as "Seller") and BlueChart, LLC, a Washington limited liability company (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, all Lots to be created in Phase One of Vista Field, which is situated in the City of Kennewick, Benton County, Washington, and more particularly described on **Appendix A** attached hereto (the "**Property**"). Before Closing, the Closing Agent shall replace the legal description on attached Exhibit A with the legal description of all single-family residential lots created in the final plat of the Property. The Parties hereby authorize the Closing Agent to take such action upon recording of the final plat of the Property without further instruction. As used herein, the term "**Lot**" shall mean any single-family attached or detached residential building lot created within the Property upon recording of a final plat of the Property in compliance with the Approved Development Plan (as that term is defined in the Reservation and Take Down Agreement executed by the Parties on April 1, 2025 (the "**Take Down Agreement**")

2. PURCHASE PRICE AND EARNEST MONEY.

- 2.1 <u>Purchase Price</u>. Using the lot pricing methodology listed in Section 1.2 of the Take Down Agreement, the Purchase Price shall be <u>EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$80,000.00) PER LOT</u> ("*Purchase Price*"). Purchaser shall pay the Purchase Price in cash or other immediately available funds in installments pursuant to the Closing Schedule (as that term is defined in Section 7.4 below), plus or minus adjustments and credits as provided in this Agreement.
- Earnest Money Deposit. Using the earnest money formula listed in Section 1.3 of the Take Down Agreement, within three (3) business days of the Effective Date, Purchaser shall execute and deliver to the Closing Agent a Promissory Note in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00) in the form attached to the Take Down Agreement as Exhibit F (the "Earnest Money Note"). Provided BlueChart timely delivers the Feasibility Waiver Notice required under Section 4.1 (a) below, BlueChart shall convert the Earnest Money Note to cash by wiring funds into the Closing Agent's escrow account within three (3) business days of the delivery of such notice. Once converted, such funds shall be referred herein as a "Deposit". Except as otherwise specifically provided in this Agreement, the Deposit shall be non-refundable when paid and fully applicable to the Purchase Price on a prorated basis determined by

the number of lots closed in each Closing. By way of example, if the Phase includes 50 lots, Five Thousand Dollars (\$5,000) of the deposit shall be applied at closing for each Lot included in the Closing (\$250,000 deposit \div 50 lots = \$5,000 per lot).

3. TITLE TO PROPERTY.

- 3.1 <u>Conveyance</u>. At each Closing, Seller shall convey to Purchaser fee simple title to the Lots included in the Closing 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 ("Preliminary Commitment") for an owner's standard coverage policy of title insurance for the Property in the amount of the Purchase Price to be issued by the Benton Franklin Title Company (the "Title Company") and accompanied by links to all documents referred to in the commitment (the "Preliminary Commitment"). Within fifteen (15) business days of Seller's delivery of a copy of the Preliminary Commitment 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. Notwithstanding the foregoing, Seller shall to remove all monetary liens associated with any period prior to the Closing regardless of Purchaser's designation of such lien as a Disapproved Exception. 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 non-monetary Disapproved Exceptions removed.

If Seller elects not to remove any Disapproved Exemptions, Purchaser will have until the expiration of the Feasibility Study Period (as defined in Section 4.1.1 below) 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 in which event the Deposit shall be returned to Purchaser, or (ii) proceed with the purchase and to take the Property subject to those exceptions. Notwithstanding the foregoing, Purchaser shall have the right to sue for specific performance if the Seller fails to remove any monetary liens or encumbrances it is otherwise required to remove prior to Closing. If terminated, 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.

Any new title exceptions disclosed prior to any Closing shall be subject to the same review and approval process in the preceding paragraph provided Purchaser may not disapprove any exception recorded at the request of or with the prior written consent of Purchaser.

3.3 <u>Title Policy</u>. Seller shall cause Title Company to issue to Purchaser at each Closing a standard coverage owner's policy of title insurance (Form 2021) insuring Purchaser's title to the Lots included in that Closing in the full amount of the Purchase Price applicable to such Lots subject only to the Permitted Exceptions (the "*Title Policy*"). The Title Policy must be dated as of the applicable Closing Date. Notwithstanding anything contained herein to the contrary, Purchaser may, in its sole discretion and its sole cost, elect to acquire extended coverage title insurance at any Closing provided Purchaser pays the additional premium charged for such extended coverage and any required survey or other costs. [In such event, Seller shall execute and deliver to the Title Company the form owner's affidavit and indemnities required by the Title Company to issue extended coverage.]

4. CONDITIONS TO CLOSING.

4.1 Right to Inspect the Property.

4.1.1 Feasibility Study.

No later than three (3) business days after the Effective Date, Seller shall deliver the following information to Purchaser for the Property: surveys, engineering plans, binding site plans, soil studies, wetland reports, environmental studies, environmental site assessments, Phase II environmental reports, other third party consultant materials, leases, contracts, development agreements and other agreements binding on all or any portion of the Property. Notwithstanding the foregoing, the Seller shall have no obligation to deliver any information previously delivered to Purchaser pursuant to any purchase and sale agreement entered by the Parties.

During the period beginning at the Effective Date and ending ninety (90) days therefrom but in any event no earlier than the date an Approved Development Plan has been mutually approved by Purchaser and Seller and attached hereto as Appendix D (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 including without limitation soils testing, soils sampling and percolation analysis. If Purchaser elects to proceed with the purchase, Purchaser shall deliver written notice of such determination to Seller on or before the final day of the Feasibility Study Period ("Feasibility Waiver Notice"). If Purchaser fails to timely deliver the Feasibility Waiver Notice, and such failure

continues for 5 business days after delivery of written notice of such failure from Seller, then this Agreement shall automatically terminate, the Deposit shall be returned to Purchaser, and the Parties shall have no further rights or obligations under this Agreement, except as otherwise provided in this Agreement.

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 restore the property, indemnify the Seller, and cause all liens to be released in compliance with Section 4.1.3 below.

If this transaction fails to close due to a default by Purchaser and Seller is otherwise in compliance with its obligations hereunder, Purchaser shall upon written request from Seller 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. Notwithstanding the foregoing, Purchaser shall have no obligation to provide the Seller with any of the following: (1) any items containing confidential, proprietary, or privileged information, (2) any of Purchaser's financial or marketing information, (3) any plans/drawings for Purchaser's homes and related improvements, or (4) any item prohibiting assignment or re-production by its terms. The delivery of items hereunder shall be subject to the proprietary rights of the consultants who prepare them and all limitations on use imposed by them. The provisions of this Section shall survive termination of this Agreement.

4.1.2 Environmental Studies. At any time and from time to time during the Feasibility Study Period, Purchaser and Purchaser's subcontractor's, consultants, employees, agents, and other designees (collectively, "Purchaser's Designees") shall have the right to perform a complete environmental audit of the Property and soils tests, percolation 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"). 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 Seller's request.

- 4.1.3 <u>Access and Conditions</u>. 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. <u>Compliance</u>; No <u>Interference</u>. The Feasibility Study and all Environmental Studies shall be conducted in full compliance with all laws and restrictions applicable to the Property.
 - b. <u>Insurance</u>. 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. <u>Restoration</u>. Promptly after any physical inspection of the Property by Purchaser or Purchaser's Designees, Purchaser at its sole cost shall restore the Property to substantially the condition that existed immediately prior to such inspection.
 - d. <u>No Liens</u>. 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. <u>Indemnity</u>. 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 gross negligence, recklessness, willful misconduct or breach of contract or law by Seller or any of

Seller's consultants, agents, representatives, or employees, (collectively, "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, disclosure or exacerbation of any Hazardous Substance or other substance in, under or about the Property (provided such exacerbation is not the result of the intentional misconduct of Purchaser or any of Purchaser's Designees). Purchaser's obligations under this Section 4.1(e) shall survive the Closing or the termination of this Agreement prior to the Closing.

- 4.2 <u>Purchaser's Contingencies</u>. Purchaser's obligation to purchase Lots within the Property is expressly contingent upon the following:
 - 4.2.1 <u>Feasibility Study</u>. Purchaser's approval, prior to expiration of the Feasibility Study Period, of the suitability of the Property as evidenced by the delivery of the Feasibility Waiver Notice to Seller; and
 - 4.2.2 <u>Environmental Condition</u>. 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
 - 4.2.3 <u>Title Policy</u>. Purchaser's receipt of Title Company's firm commitment to issue, upon Closing, the Title Policy as described in Section 3; and
 - 4.2.4 <u>Infrastructure Improvements Complete</u>. Seller's timely performance of all of its obligations under the Take Down Agreement and this Agreement including without limitation completion of all Infrastructure Improvements; 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
 - 4.2.5 <u>Seller's Representations and Warranties</u>. Seller's representations and warranties set forth in Section 5.1 below shall be true in all material respects at and as of each Closing; and
 - 4.2.6 No Moratorium. There shall be no moratorium or similar prohibition imposed by any governmental or private authority which would preclude or materially and substantially hinder issuance of building permits or certificates of occupancy for the Property, the availability of or connection to electric, gas, telephone, sanitary sewer or water line hookups, or which otherwise materially and adversely impact the ability of Purchaser to construct single-family residential dwellings on the Property. In the event of such moratorium or prohibition, Purchaser may, in its sole discretion, terminate this Agreement by written notice thereof to Seller and the Deposit then held by the Closing Agent for the Property shall be promptly returned to Purchaser and neither party shall thereafter have any further obligation under this Agreement except as specifically provided herein; and

- 4.2.7 <u>Approved Development Plan</u>. The Parties shall have agreed to an Approved Development Plan for the Property which plan shall be attached hereto as Appendix D and all construction required under an Approved Development Plan agreed to for any prior Phase has either been completed by Seller or waived or amended with the prior written consent of Purchaser.
- 4.2.8 <u>Construction License</u>. Prior to the Closing of the first Lot within the Phase, Seller shall grant Purchaser a license to an area designated in the Approved Development Plan for the exclusive use of Purchaser and Purchaser's Designees for construction material, equipment, and vehicle staging, storage and use including without limitation placement of a construction trailer (the "*Construction License*"). Such use shall be subject to the requirements of Section 4.1.3 above. The receipt of such Construction License is material consideration for Purchaser's agreement to construct residential improvements on each Lot after Closing and shall be provided to BlueChart without cost or charge.

The foregoing conditions contained in this Section 4.2 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 in connection with the Closing of any Lots, Purchaser will have the right to waive the contingency and close on the Lots included in such Closing or terminate the obligation to purchase Lots under this Agreement. If Purchaser elects to terminate this Agreement, the escrow will be terminated, the Deposit not previously applied to the Purchase Price shall be returned to Purchaser, all documents 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 waives Purchaser's Contingencies, the Parties shall proceed to Closing.

- 4.3 <u>Seller's Contingencies</u>. Seller's obligation to sell Lots within the Property is expressly contingent upon the following:
 - 4.3.1 Seller's Board of Commissioners 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. By executing this Agreement, Seller confirms that all such actions have been taken and this contingency is satisfied. 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; and
 - 4.3.2 There shall be no pending appeals of any ministerial or quasi-judicial decision of the City of Kennewick related to the platting of the Property, nor any delay of approval related to any conditions of final plat thereof by the City of Kennewick or any other agency with jurisdiction. Should any

pending appeal or delay last for longer than one hundred eighty (180) days, either the Seller or the Purchaser shall have the right to terminate this Agreement, in their sole and independent discretion. Subsequent to such termination, Seller shall refund any escrow deposit to Purchaser, and Purchaser shall have a right of first refusal related to the lots contemplated by this Agreement for a period of twelve (12) months from the date of such termination; and

- 4.3.3 Seller must record final plat approval with Benton County in order to create valid lots capable of being legally conveyed to Purchaser; and
- 4.3.4 All monies deposited into escrow and related to the creation and conveyance of future lots, must be held in escrow until final plat approval has been recorded with Benton County.

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; or (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. 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. Except as otherwise provided in the Take Down Agreement, Purchaser shall assume, as of each Closing, the responsibility for and risk of all defects and conditions of the Lots included in such Closing, including any defects and conditions that cannot be observed by casual inspection. The Parties specifically agree that at Closing the Purchaser waives all claims for damages or relief at law or in equity against the Seller (except for fraud or bad faith) related to environmental liability for the Property including without limitation under 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 foregoing, Seller makes the following affirmative representations and warranties as of the Effective Date of this Agreement and as of each Closing:

- (a) <u>Authority</u>. The execution and delivery of this Agreement by the Seller and the consummation by the Seller of the transaction contemplated in this Agreement are within the Seller's capacity and all requisite action has been taken to make this Agreement valid and binding on the Seller in accordance with its terms. The individual signing this Agreement on behalf of the Seller is fully authorized and empowered to sign this Agreement on the Seller's behalf and, upon execution thereof, said Agreement shall be fully binding upon the Seller.
- (b) <u>No Legal Bar</u>. The execution by the Seller of this Agreement and the consummation by the Seller of the transaction hereby contemplated does not, and as of Closing will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which the Seller is a party and which affects all or any portion of the Property, or (b) to the Seller's knowledge, constitute a violation of any governmental requirement.
- (c) <u>No Default</u>. The Seller is not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which the Seller is a party and which affects any portion of the Property.
- (d) <u>Title</u>. The Seller is the owner of the Property in indefeasible fee simple title, free and clear of all liens, encumbrances and restrictions of any kind, except the Permitted Exceptions, encumbrances of record which will be discharged at Closing, and other matters which have been recorded at the request of or with the prior written consent of Purchaser.
- (e) <u>Litigation</u>. There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Seller, threatened against the any portion of the Property owned by Seller, including without limitation, condemnation or eminent domain claims, actions or proceedings.
- (f) <u>Hazardous Material</u>. The Seller has not received any notice and has no knowledge that the Property, nor any portion thereof, has ever been used by previous owners and/or operators, or been a repository for, and the Seller has not used the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any "*Hazardous Substances*" as defined in 42, U.S.C. Section 9601 <u>et seq.</u>, 40 C.F.R. 261.3 or any other law, rule or regulation of any governmental body relating to environmental matters in violation of applicable environmental laws or otherwise to bring the Property within the ambit of, any state, local or federal law, regulation, rule, policy or order relating to the protection of the environment, and the Seller has not received a summons, citation, directive, letter or other communication, written or oral, from any agency or department of the State of Washington, the U.S. Government or any other governmental body concerning Hazardous Substances on the Property.
- (g) <u>Access.</u> The Property currently has full, free and adequate vehicular and pedestrian access to and from a public right of way. At Closing, each Lots included in such Closing shall have full, free and adequate vehicular and pedestrian access to and from a public right of way.

- (h) <u>Parties in Possession</u>. There are no parties in possession of any portion of the Property as lessees, tenants or trespasser. At Closing, there will be no parties in possession of any Lot included in such Closing.
- (i) <u>No Violations of Law</u>. To the best of Seller's knowledge, there have not been, presently there are no, and at Closing there shall not be any violations of local, state or federal laws, ordinances, rules or regulations applicable to the Property.
- (j) <u>Site Conditions</u>. The Seller has disclosed all matters known to the Seller such as sink holes, 100-year flood plain or floodway designation, underground water sources, wells or mine shafts, or percolation restrictions that would be material or interfere with Purchaser's intent to construct residential dwelling units on the Property.
- (k) <u>No Unrecorded Commitments</u>. The Seller has made no commitments and, to the Seller's knowledge, the Property is subject to no commitments for contributions or assessments of money or land except as set forth in documents encumbering the Property and recorded in the official public records of Benton County, Washington.
- (l) <u>FIRPTA</u>. The Seller is not a "foreign person", as defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder, and at or prior to each Closing contemplated under this Agreement, Seller agrees to provide Purchaser an affidavit to that effect.
- (m) <u>Historic Status</u>. The Seller has received no notice that any Property contains archeological or historic artifacts that would subject the Property to governmental regulations pertaining to the same.
- (n) <u>Knowing Failure to Disclose</u>. The Seller has not intentionally withheld any information in its possession or control that would prohibit or materially and adversely impair (through a material increase in construction costs or otherwise) the development of the Property with residential improvements.
- 5.2 <u>Duty to Disclose</u>. The Seller shall disclose to Purchaser in writing any conditions or events that arise or occur subsequent to the Effective Date of this Agreement that become known to the Seller and which contradict or modify any representation of the Seller set forth herein or otherwise have a material effect upon the Property, in which case, Purchaser may, at its sole discretion and subject to the Seller's opportunity to cure in Section 5.5 below, elect to waive such discrepancy or terminate this Agreement in which case any unapplied Deposit shall be paid to Purchaser as its sole remedy (except in the case of bad faith or fraud by Seller).
- 5.3 <u>Survival</u>. The Seller's representations and warranties for the Property shall survive twelve (12) months after Closing of the last Lot in the Property and shall not merge into the Deeds.
- 5.4 <u>Definition of Knowledge</u>. For purposes of this Agreement, the Seller's knowledge

- is limited to the actual knowledge of the Chief Executive Officer and the Director of Planning and Development.
- 5.5 Opportunity to Cure. If any of the Seller's representations become untrue before Closing, the Seller shall take all commercially reasonable actions to make such representations true and correct before Closing
- No Seller Liability for Exceptions Known to Purchaser. The Seller shall have no liability (and Purchaser waives all claims against the Seller) for a breach of any representation or warranty of the Seller made in this Agreement if the breach in question constitutes or results from a condition, state of facts or other matter that was known to Purchaser prior to a Closing and Purchaser elected to proceed with the Closing despite such breach.
- 5.7 Purchaser's Representations and Warranties. Purchaser represents and warrants to the 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. The individual signing this Agreement on behalf of Purchaser is fully authorized and empowered to sign this Agreement on the entity's behalf and, upon execution thereof, this Agreement shall be fully binding upon Purchaser. For purposes of this Agreement, the knowledge of Purchaser is limited to the actual knowledge of Benjamin Paulus and Levi Holmes. Purchaser shall have no liability (and the Seller waives any claim against Purchaser) for a breach of any representation or warranty of Purchaser made in this Agreement for any Phase if the breach constitutes or results from a condition, state of facts, or other matter that was known to the Seller prior to Closing and the Seller elects to proceed with Closing despite such breach.
- 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 Deposit shall be returned to the Purchaser unless Purchaser elects, in its sole discretion, to waive such loss or damage and proceed with Closing.

7. CLOSING.

- 7.1 <u>Closing Agent.</u> This transaction shall be closed by Benton Franklin Title Company ("*Closing Agent*").
- 7.2 <u>Closing Costs.</u> Closing costs shall be allocated as follows:

SellerPurchaserExcise TaxRecording FeesTitle Insurance PremiumExtended Coverage PremiumOne-Half Closing Fee CostsOne-Half Closing Fee Costs

- Other incidental closing costs shall be paid and/or allocated in accordance with local practice.
- 7.3 <u>Items to be Prorated</u>. 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 <u>Closing Date Possession.</u> Provided all contingencies have been satisfied or waived, the Closing of Lots shall occur in accordance with the take down schedule set forth in this Section 7.4 and otherwise in the order designated in the Approved Development Plan. "*Closing*" or "*Closing Date*" shall be the date on which all documents are recorded and funds are available for disbursement for the sale of Lots included in the Closing. Seller shall deliver possession of the Lots to Purchaser on the applicable Closing Date.

The PSA will need to be amended after Approved Development Plan (where lot sequence is established) and again after Final Plat (when PTN's are assigned).

- 7.5 <u>Conveyance.</u> At Closing, Seller shall deliver to Purchaser a Statutory Warranty Deed for the Lots included in such Closing, free of any encumbrance or defect except the Permitted Exceptions. The Property will be subject to the Declaration of Covenants, Conditions & Restrictions for Vista Field attached hereto as Appendix B (the "CC&Rs").
- 7.6 <u>Seller's Escrow Deposits</u>. On or before each Closing Date, Seller shall deposit into escrow the following for Lots included in such Closing:
 - a. a duly executed and acknowledged statutory warranty deed conveying title to the Lots subject only to the Permitted Exceptions; and
 - b. a duly executed and acknowledged Real Estate Tax Affidavit; and
 - c. a duly executed and acknowledged affidavit that the Seller is not a "foreign person", as defined in Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder; and
 - d. an assignment of and any all permits the Seller may have acquired for final plat approval that are required for construction or completion of the homes by Purchaser (e.g. grading permits, storm water discharge permits, etc.); and
 - e. any other documents, instruments, records, correspondence and agreements called for hereunder that have not previously been delivered.
- 7.7 <u>Purchaser's Escrow Deposits</u>. On or before each Closing Date, Purchaser shall deposit into escrow the following for Lots included in such Closing:

- a. cash or other immediately available funds in an amount sufficient to pay the Purchase Price for such Lots and Purchaser's share of closing costs, less the Deposit allocated to such Lots; and
- b. a duly executed and completed Real Estate Excise Tax Affidavit; and
- c. any other documents or instruments Purchaser is obligated to provide pursuant to this Agreement (if any) in order to close this transaction.
- 7.8 <u>Additional Instruments and Documentation</u>. Seller and Purchaser 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 <u>Foreign Investment in Real Property Tax Act.</u> 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 <u>Obligation to Construct.</u> The Parties agree that the Purchaser will construct one or more dwelling units on each Lot acquired under this Agreement (collectively, the "*Improvements*") in accordance with the following requirements.
 - 8.1.1 Application for a building permit on each Lot shall be submitted no later than forty-five (45) days from the date the deed is recorded transferring the Seller's title to such Lot to Purchaser and, subject to the force majeure provisions contained in Section 10.12 below, construction must be concluded, including all landscaping, within twelve (12) months from such date;
 - 8.1.2 Commencement of construction will be evidenced by issuance of all required building/construction permits and approvals for the Improvements together with actual commencement of on-site construction; completion of construction shall be evidenced by issuance of a Certificate of Occupancy by the applicable governmental authorities.
 - 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 **Appendix 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 Town Architect prior to Closing, a copy of which is attached hereto as **Appendix C** and incorporated herein by reference;
 - 8.1.5 No material changes in plans or specifications may be made by Purchaser without prior review and approval of the Town Architect's written approval;

- 8.1.6 The Town Architect shall have the right to approve the building design in accordance with the provisions of the CC&Rs and the Vista Field Design Standards, 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 10.12 below, the Parties agree that in the event construction of the Improvements described in 8.1 above, or some other mutually agreed upon utilization of the Lots, has not concluded as required under Section 8.1.1 above, Seller shall have the right to repurchase those Lots on which construction has not commenced at the same Purchase Price paid by Purchaser, with all closing costs and real estate excise taxes paid by the Purchaser in cash or immediately available funds at Closing. Seller must give Purchaser written notice of its intent to repurchase the Property within eighteen (18) months of the date the deed is recorded transferring the Seller's title to the Lots. 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 Lots 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. Any dispute regarding the value of such improvements shall be resolved by arbitration in accordance with the procedures described in Section 10.2 of this Agreement.

Closing for the repurchase of the Lots 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 thirty (30) days after delivery of the Seller's written notice. Upon Closing, Purchaser shall immediately vacate and redeliver possession of the Lots to the Seller. At Closing, the Purchaser will execute a statutory warranty deed re-conveying the applicable Lots to Seller and this Agreement shall be void and of no further force or effect with respect to the Lots repurchased.

Notwithstanding the foregoing, if Seller exercises its right to repurchase Lots under this Section, Purchaser may elect to structure such repurchase as a rescission of the original acquisition in accordance with the requirements of WAC 458-61A-209.

8.3 <u>Assignment.</u> Except for an assignment to a wholly owned subsidiary of BlueChart or a related entity in which BlueChart, Benjamin Paulus, and/or Levi Holmes hold a majority ownership interest, BlueChart shall not have the right to assign this Agreement or any of its rights or obligations hereunder to any persons, corporations or other entity without the written approval of Port, which approval may be arbitrarily withheld by Port, it being specifically understood and agreed that the Port has entered into the subject contract with BlueChart solely and only because it is familiar with, knowledgeable about and desirous of permitting only BlueChart's key principals, Benjamin Paulus and/or Levi Holmes, to construct dwelling units within the subdivision contemplated by this Agreement. The Port shall not have the right to assign any or all of its rights under the subject Agreement.

- 8.4 <u>Hold Harmless.</u> Further and in consideration of the terms hereof, in the event the Seller repurchases any portion of the Property, Purchaser shall release and hold Seller harmless and shall indemnify and defend Seller from any and all claims, demands, liens, or encumbrances on the Lots arising from Purchaser's ownership of or activities on the Property.
- 8.5 <u>Subordination to Financing</u>. Notwithstanding anything to the contrary contained herein, Seller's repurchase rights under this Section 8 shall be subordinate in all respects to the rights of any acquisition and development lender providing financing for the Property. The subordination granted herein relates solely to Seller's repurchase rights, and thus all other rights and obligations of Purchaser as described in this Purchase and Sale Agreement or the incorporated Take Down Agreement (except for the separately-granted right of first refusal rights) shall be applicable to any lender exercising said subordination rights to acquire the Property. Within ten (10) days of request, Seller shall execute a subordination agreement in the form required by Purchaser's lender provided Seller shall not be obligated to assume the loan or incur any costs of Purchaser in connection with such subordination.
- 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: Blue Chart, LLC

c/o Blue Fern Development I, LLC 18300 Redmond Way, Ste 120 Redmond, WA 98052-5183

Attn: Ben Paulus Phone: (425) 629-3854 Email: ben@bluefern.com

and

c/o Chartwell Building Company LLC 307 Bayshore Dr NW, Suite 307,

Silverdale WA 98383 Phone: (360) 265-8701

Email: levi@chartwellland.com

Seller: Port of Kennewick

350 Clover Island Drive, Suite 200 Kennewick, Washington 99336

Attn: Tim Arntzen, Chief Executive Officer

Phone: (509) 586-1186

Email: 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: (509) 455-9077

Email: thume@workwith.com

10. MISCELLANEOUS.

10.1 Default and Remedies.

10.1.1 Opportunity to Cure. Failure to close without legal excuse shall constitute an immediate default under this Agreement. For the breach of any other covenant, representation or warranty under this Agreement, a party shall only be entitled to declare a default and pursue its rights and remedies for breach and default under this Agreement if notice of the breach has been given to the breaching party and the breaching party fails to cure such breach within ten (10) business days after receiving such notice.

10.1.2 <u>Purchaser Remedies</u>. If this transaction fails to close due to default by Seller without legal excuse, Purchaser may elect to pursue the following remedies: (a) terminate this Agreement, in which event the Deposit shall be immediately returned to Purchaser; (b) maintain an action for specific performance or other injunctive relief; and/or (c) if an action for specific performance is not available due to the wrongful acts or omissions of Seller, bring an action for damages provided that punitive damages, lost profits or other consequential damages are prohibited and may not be claimed and the Seller's maximum reimbursement obligation for actual damages shall not exceed Five Hundred Thousand and 00/100 Dollars (\$500,000).

10.1.3 Seller's Remedy/Liquidated Damages. In the event of any uncured default by Purchaser without legal excuse, Seller shall be entitled to terminate this Agreement and retain the Deposit as liquidated damages. The foregoing shall be Seller's sole and exclusive remedy for any breach or default by Purchaser, and Seller's receipt of the Deposit shall constitute a waiver of any other rights or remedies that Seller may have at law or in equity. THE PARTIES ACKNOWLEDGE AND AGREE THAT ACTUAL DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE. THE PARTIES AGREE THAT, CONSIDERING THESE DIFFICULTIES, THE EARNEST MONEY DEPOSIT THEN HELD BY THE CLOSING AGENT IS THE BEST ESTIMATE OF THE SELLER'S DAMAGES AND IS THE COMPENSATION TO WHICH THE SELLER SHALL BE ENTITLED. IN NO EVENT SHALL THE SELLER BE ENTITLED TO SUE PURCHASER FOR SPECIFIC PERFORMANCE OR DAMAGES. NOTHING

- IN THIS SECTION IS INTENDED TO, NOR DOES, RESTRICT THE SELLER'S ABILITY TO (I) ENFORCE ANY OBLIGATION OF PURCHASER TO PAY ATTORNEY'S FEES UNDER THIS AGREEMENT, (II) ENFORCE ANY INDEMNIFICATION OBLIGATION OF PURCHASER UNDER THIS AGREEMENT, OR (III) PURSUE ANY REMEDIES THE SELLER MAY HAVE FOR FRAUD OR OTHER BAD FAITH ACTION BY PURCHASER.
- Dispute Resolution and Attorney's Fees. In the event of any claim or dispute 10.2 arising under Section 8.2 of 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 <u>Time is of the Essence.</u> Time is of the essence of this Agreement.
- 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 or Standard Time (as applicable).
- 10.5 <u>Governing Law and Venue.</u> 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 <u>Authority to Execute Agreement.</u> Each of the undersigned represents and warrants that, if not signing on his/her own behalf, he/she has the authority to bind the entity for which he/she is executing this Agreement.
- 10.7 <u>Entire Agreement.</u> There are no verbal or other agreements which modify or affect this Agreement, and Purchaser and Seller acknowledge that this Agreement together with the Take Down Agreement constitutes the full and complete understanding between Purchaser and Seller.

- 10.8 <u>Amendments</u>. This Real Estate Purchase and Sale Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.
- 10.9 <u>Broker Compensation.</u> 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.

- 10.10 <u>Obligations to Survive Closing.</u> The obligations in Section 8 of this Agreement and as otherwise specifically provided herein shall survive Closing.
- 10.11 <u>Termination.</u> Unless otherwise agreed between the Parties, this Agreement shall terminate unless signed by Purchaser and returned to Seller before 5:00 p.m. the 3rd business day following the Port of Kennewick's next scheduled Commission meeting.
- 10.12 <u>Force Majeure.</u> 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 <u>Negotiation and Construction.</u> 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 <u>Waiver</u>. 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 Electronic Signatures. The Parties acknowledge and agree that execution of this Agreement, and amendment hereto, and the Feasibility Waiver Notice may be accomplished by electronic signature utilizing DocuSign or any other mutually acceptable similar online, electronic, or digital signature technology. The Parties agree that this Agreement may be transmitted by facsimile machine or by electronic scanning and email, and the Parties intend that faxed, scanned, and electronic signatures shall constitute original signatures. A facsimile or scanned copy or any counterpart or conformed copy of this Agreement, including use of Adobe PDF technology to merge pages and create a conformed copy of this Agreement, with the signature (original, faxed, or scanned signature or permitted electronic signature) of all the Parties shall be binding on the Parties.
- 10.16 Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.17 Exhibits. The following Exhibits are attached hereto and made a part of this Agreement by reference:

Appendix A: Legal Description of Phase

Appendix B: Port of Kennewick Vista Field Covenants, Conditions and

Restrictions

Appendix C: Port of Kennewick Vista Field Design Standards

Appendix D: Approved Development Plan

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

Tim Amtzen

897EAA4F32B4455.
Tim Arntzen, Chief Executive Officer

Approved:	Approved as to form:
Nick Kooiker, Port Auditor/CFO	Taudd Hume Taudd Hume, Port Counsel
PURCHASER: BlueChart, LLC	
By: Lewi Holmes Levi Holmes	
Its: Member	
By: Benjamin Paulus	
Its: Member	

ACKNOWLEDGEMENTS

State of Washington
——————————————————————————————————————
On this day personally appeared before me <u>Tim Arntzen</u> to me known to be the <u>Chief</u> <u>Executive Officer</u> of the <u>Port of Kennewick</u> , 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) County of On this day personally appeared before meto me known to be theto me known to be the 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:

IN LIEU OF NOTARY, INCLUDE DOCUSIGN CERTIFICATION PAGE

APPENDIX A

(Legal Description of the Phase)

LEGAL DESCRIPTION PROPOSED BLOCK 1

LOTS 27, 28, 29 AND 30, BINDING SITE PLAN 5674, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 5674, RECORDS OF BENTON COUNTY, WASHINGTON.

TOGETHER WITH THAT PORTION OF TRACT L, SAID BINDING SITE PLAN 5674, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

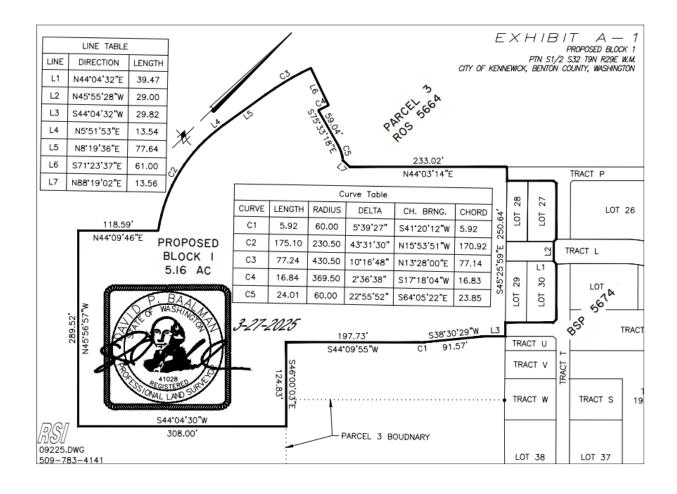
COMMENCING AT THE WESTERLY MOST CORNER OF SAID LOT 30; THENCE NORTH 44°04'32" EAST 39.47 FEET ALONG THE NORTHWESTERLY BOUNDARY OF SAID LOT 30 TO AN ANGLE POINT THEREIN AND THE **POINT OF BEGINNING**; THENCE NORTH 45°55'28" WEST 29.00 FEET TO THE NORTHWESTERLY BOUNDARY OF SAID TRACT L AND THE **TERMINUS** OF SAID DESCRIBED LINE.

AND TOGETHER WITH THAT PORTION OF PARCEL 3, RECORD SURVEY 5664, ACCORDING TO THE SURVEY THEREOF RECORDED IN VOLUME 1 OF SURVEYS, PAGE 5664, RECORDS OF BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY MOST CORNER OF TRACT P, SAID BINDING SITE PLAN 5674; THENCE SOUTH 45°25'59" EAST 250.64 FEET ALONG THE SOUTHWESTERLY BOUNDARY OF SAID BINDING SITE PLAN 5674; THENCE LEAVING SAID BOUNDARY SOUTH 44°04'32" WEST 29.82 FEET; THENCE SOUTH 38°30'29" WEST 91.57 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 60.00 FEET; THENCE SOUTHWESTERLY 5.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°39'27"; THENCE SOUTH 44°09'55" WEST 197.73 FEET; THENCE SOUTH 46°00'03" EAST 124.83 FEET ALONG THE BOUNDARY OF SAID PARCEL 3 AND THE NORTHWESTERLY PROLONGATION THEREOF: THENCE LEAVING SAID BOUNDARY SOUTH 44°04'30" WEST 308.00 FEET; THENCE NORTH 45°56'57" WEST 289.52 FEET; THENCE NORTH 44°09'46" EAST 118.59 FEET TO THE BEGINNING OF A CURVE. CONCAVE TO THE EAST, HAVING A RADIUS OF 230.50 FEET (THE LONG CHORD OF SAID CURVE BEARS NORTH 15°53'51" WEST 170.92 FEET); THENCE NORTHERLY 175.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 43°31'30"; THENCE NORTH 5°51'53" EAST 13.54 FEET; THENCE NORTH 8°19'36" EAST 77.64 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 430.50 FEET; THENCE NORTHEASTERLY 77.24 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10°16'48"; THENCE SOUTH 71°23'37" EAST 61.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 369.50 FEET (THE LONG CHORD OF SAID CURVE BEARS SOUTH 17°18'04" WEST 16.83 FEET); THENCE SOUTHWESTERLY 16.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°36'38"; THENCE SOUTH 75°33'18" EAST 59.04 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 60.00 FEET; THENCE SOUTHEASTERLY 24.01 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°55'52"; THENCE NORTH 88°19'02" EAST 13.56 FEET; THENCE NORTH 44°03'14" EAST 233.02 FEET TO THE POINT OF BEGINNING.

CONTAINS 5.16 ACRES, MORE OR LESS.





APPENDIX B

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

APPENDIX C

(Port of Kennewick Vista Field Design Standards)

APPENDIX D

(Approved Development Plan for the Phase)

EARNEST MONEY NOTE

(Promissory Note for Initial Earnest Money Deposit)

April 1, 2025

Benton County, Washington

FOR VALUE RECEIVED, [Blue Chart] ("Maker") hereby promises to pay Benton Franklin Title Company ("Holder") the sum of <u>TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (US Currency) (\$250,000.00)</u> which shall become payable within three (3) business days after Maker's delivery of the Feasibility Waiver Notice in accordance with Section 4.1.1 of the Real Estate Purchase and Sale Agreement executed by Maker and Port of Kennewick, a Washington municipal corporation ("Holder") on or about the date hereof.

Maker promises to pay to the Holder on demand all costs and other expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by the Holder in collecting this Note or enforcing or in exercising any of its rights, remedies, powers, or privileges created by, connected with, or provided for in this Note, regardless of whether or not a lawsuit is filed, and regardless of whether in connection with a lawsuit of original jurisdiction or any appeal.

This Note shall be governed by and construed in accordance with the laws of the State of Washington.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

By: Levi Holmes

Its: Member

By: Docusigned by:
Levi Holmes

By: Docusigned by:
By: Benjamin Paulus

Its: Member

Date: April 1, 2025.

PORT OF KENNEWICK

RESOLUTION No. 2025-13

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING THE FIRST AMENDMENT TO THE PURCHASE & SALE AGREEMENT WITH BLUECHART, LLC

WHEREAS, the Port Commission entered into a Reservation & Takedown Agreement and Phase One Purchase and Sale Agreement with BlueChart LLC on March 25, 2025 to construct single family attached and detached homes over multiple phases throughout the Port's Vista Field redevelopment project; and

WHEREAS, a 90-day feasibility period was established in the Phase One purchase and sale agreement allowing the port to collaborate with BlueChart on a Phase One Approved Development Plan; and

WHEREAS, BlueChart LLC requests an additional 60-day extension to the feasibility period in order to refine details for the first phase of home designs and infrastructure in Vista Field.

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 an Amendment to extend the feasibility period for Phase One by 60 days.

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 10th day of June, 2025.

	PORT of KENNEWICK BOARD of COMMISSIONERS
By:	
	SKIP NOVAKOVICH, President
By:	
	KENNETH HOHENBERG, Vice President
By:	
	THOMAS MOAK, Secretary

FIRST AMENDMENT OF PURCHASE AND SALE AGREEMENT

This FIRST AMENDMENT OF PURCHASE AND SALE AGREEMENT (this "First Amendment") is entered into this 10th day of June, 2025 (the "Effective Date") by and among the PORT OF KENNEWICK, a Washington municipal corporation (as "Seller"), and BLUECHART, LLC, a Washington State Limited Liability Company (as "BlueChart"), who are hereinafter singularly referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Seller and BlueChart previously entered into a Purchase and Sale Agreement, dated April 1, 2025, related to real property described in Section 1 therein (the "Purchase and Sale Agreement"); and

WHEREAS, since the execution of the Purchase and Sale Agreement the Parties have been working together on a Development Plan for Phase One amenities, materials, parcel layout and preliminary home elevations; and

WHEREAS, Section 4.1.1 contains a ninety (90) day period for the Feasibility Study Period; and

WHEREAS, BlueChart has requested day 60-day extension of this period to refine elements of the Phase One design and allow the Port of Kennewick team time to estimate costs for the proposed elements; and

WHEREAS, pursuant to Section 4.1.1 of the Purchase and Sale Agreement the Parties must agree on a course of action for an Approved Development Plan prior to expiration of the feasibility period; and

WHEREAS, the Parties wish to amend the Purchase and Sale Agreement as it relates to the extension of the Feasibility Study Period; and

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

AGREEMENT

- 1. <u>Recitals</u>. The Recitals set forth above are hereby incorporated into this First Amendment by this reference.
- 2. <u>Purchase and Sale Agreement</u>. The Purchase and Sale Agreement described in the Recitals above is incorporated by reference into this First Amendment as though written in full and shall, except as otherwise specifically modified herein, remain in full force and effect.
- 3. <u>Amendments to Purchase and Sale Agreement</u>. The Purchase and Sale Agreement shall be amended to allow a sixty (60) day extension of the existing ninety (90) day Feasibility Study Period.
 - 3.1 Section 4.1.1 is hereby amended as follows:

During the period beginning at the Effective Date and ending ninety (90) one hundred fifty (150) days therefrom but in any event no earlier than the date an Approved Development Plan has been mutually approved by Purchaser and Seller and attached hereto as Appendix D (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

- 4. <u>Further Acts and Documents</u>. The Parties shall execute any and all further documents, instruments, and other conveyances and agreements, and shall do all acts, which may be necessary or appropriate to fully implement the provisions of this First Amendment.
- 5. <u>Construction</u>. In the event of any conflict, inconsistency or ambiguity between the terms of the Agreement and this First Amendment; the terms of this First Amendment shall govern and control. Any terms that are capitalized in this First Amendment but not defined in this First Amendment that are capitalized and defined in the Agreement shall have the same meaning for purposes of this First Amendment as they have for purposes of the Agreement. The descriptive headings in this First Amendment are for convenience only and will not control or affect the meaning or construction of any provision of this First Amendment.
- 6. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument.
- 7. <u>Authority.</u> Each of the undersigned represents and warrants that he/she has the authority to bind the entity for which he/she is executing this Agreement.

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

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

SELLER:					
PORT OF KENNEWICK, a Washington Municipal corporation, by authority of its Commissioners					
By: Tim Arntzen, Chief Executive Officer					
Approved:	Approved as to Form:				
Nick Kooiker, Chief Financial Officer	Taudd Hume, Port Counsel				
PURCHASER: BLUECHART, LLC, a Washington					
imited liability company					
By: Levi Holmes					
Levi Holmes its: Member					
By:Benjamin Paulus					
By: Benjamin Paulus Its: Member					