

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”), by and between the Port of Seattle, a municipal corporation of the State of Washington (“Seller”) and TRF Pacific, LLC, a Washington limited liability company, and/or assigns (“Buyer”). Buyer and Seller are hereinafter sometimes referred to collectively as the “Parties”.

### RECITAL

Seller is the owner of a fee simple interest in and to that certain land and improvements located in the City of Seattle, King County, WA. Buyer desires to purchase and Seller desires to sell the Property, on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

1.1 Land. That certain real property located in Seattle, King County, Washington, consisting of approximately 3.44 acres, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the “Land”);

1.2 Appurtenances. All rights, privileges and easements appurtenant to the Land (all of which are collectively referred to as the “Appurtenances”);

1.3 Improvements. All improvements and fixtures located on the Land (all of which are hereinafter collectively referred to as the “Improvements”);

1.4 Personal Property. Any personal property located on and used in connection with operation of the Land or Improvements (“Personal Property”); and

1.5 Leases and Contracts. All Third Party Leases and contracts affecting the Land, if any.

All of the items described in Paragraphs 1.1, 1.2, 1.3, 1.4 and 1.5 above are herein collectively referred to as the “Property.”

2. Purchase Price of the Property. Subject to the prorations and closing costs hereinafter provided, the purchase price of the Property (“Purchase Price”) shall be Seven Million Two Hundred Thousand Dollars (\$7,200,000.00).

3. Payment of Purchase Price. The Purchase Price (as adjusted by the prorations and closing costs hereinafter provided) shall be paid as follows:

3.1 Buyer previously provided Seller with an initial cash deposit of Twenty-Five Thousand Dollars (\$25,000) (“Initial Deposit”) together with the Letter of Intent between the Parties with an effective date of July 17, 2014. Within three (3) business days following the Effective Date, Seller shall open escrow (“Escrow”) with First American Title Insurance Company (“Escrow Agent”) and deposit the Initial Deposit into Escrow (“Earnest Money”).

3.2 The balance of the Purchase Price shall be payable in all cash at Closing.

4. Title.

4.1 Conveyance of Property. Seller shall convey the Property to Buyer by bargain and sale deed in a form substantially as attached Exhibit B (“Deed”) subject to all Permitted Exceptions (defined below) and all matters which would be disclosed by a current, accurate survey of the Property.

4.2. Condition of Title. Title to the Property shall, at the option of Buyer, be insurable by an ALTA extended coverage owner’s policy of title insurance or a standard owner’s policy of title insurance, in the amount of the Purchase Price, subject only to the Permitted Exceptions (defined in subparagraph 4.4 below). Seller shall satisfy all requirements of the Title Company in connection with issuance of the title policy (“Title Policy”) in accordance with the Title Commitment (defined in subparagraph 4.3 below).

4.3. Title Insurance Commitment. Seller shall provide a current title insurance commitment issued by First American Title Insurance Company (“Title Company”). Updates to the commitment shall commit Title Company to insure title in Buyer for the Property in the amount of the Purchase Price subject only to the Permitted Exceptions. If required by the Title Company to issue an extended coverage owner’s ALTA title insurance policy, Buyer shall obtain a survey and title updates for an extended policy at its own expense. The commitment is referred to as the “Title Commitment.”

4.4 Title Review. During the Due Diligence Period (as defined below), Buyer shall have fifteen (15) days after receipt of the Title Commitment (or any subsequent update) to notify Seller of any objections it may have to any exceptions to title or other matters shown or referred to in the Title Commitment. If Buyer objects to exceptions or other matters, Seller within ten (10) days of such Buyer's notice, shall notify Buyer in writing whether Seller will remove the objected-to exceptions. If Seller fails to respond within ten (10) days of Seller’s notice, Seller shall be deemed to have elected not to remove the objected-to exception(s). If Seller elects not to remove an objected-to exception(s), then Buyer's option shall be to either (i) accept the objected-to exception(s) as Permitted Exception(s) or (ii) by written notice to Seller within seven (7) days of Seller's notice, terminate this Agreement, in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further right against the other. If Buyer fails to act within seven (7) days of receipt of Seller's election not to remove an exception, then Buyer’s objected-to exception(s) shall be conclusively deemed approved as Permitted Exceptions. All encumbrances not objected to by Buyer shall be deemed Permitted Exceptions.

4.4.1 Third Party Leases and Contracts. Buyer acknowledges that the Property is currently encumbered with two (2) month to month lease agreements listed on Schedule 1 attached hereto (“Third Party Leases”). Seller shall assign and Buyer shall accept

assignment of the Third Party Leases at Closing pursuant to an Assignment of Leases and Contracts substantially in a form as attached Exhibit C.

5. Due Diligence.

5.1 Within seven (7) days after the Effective Date, Seller shall deliver to Buyer signed complete copies of the Third Party Leases, all licenses and all contracts affecting the Property, if any; and other documents, records and materials concerning the physical condition of the Property, including, without limitation, all surveys, maps, and plans.

5.2 Due Diligence Contingency. For a period of thirty (30) days after the Effective Date (“Due Diligence Period”), the Buyer, its designated representatives or agents shall have the right, at their expense, to enter upon the Property to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, by Buyer; and (ii) examine due diligence materials pertaining to the Property that are provided by Seller. Buyer shall indemnify and hold harmless Seller from and against any mechanic's or other liens or claims (but excluding claims resulting from any pre-existing fact or condition at the Property) that may be filed or asserted against the Property or Seller as a result of actions taken by Buyer or its contractors in connection with any of Buyer's due diligence inspection activities, including Buyer due diligence inspection activities occurring prior to the Effective Date of this Agreement. If before the end of the Due Diligence Period, Buyer fails to give Seller written notice that it is waiving its Due Diligence Contingency, then Buyer shall be deemed to have elected to terminate this Agreement, the Initial Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder.

5.3 To the maximum extent permitted by RCW 64.06, Buyer expressly waives its right to receive from Seller a seller disclosure statement as provided for in RCW 64.06 (the “Seller Disclosure Statement”). Seller and Buyer acknowledge that Buyer cannot waive its right to receive the environmental section of the Seller Disclosure Statement (which is contained in Section 6 of the form). Seller will provide the same, with only such environmental section completed by the Seller, to Buyer within seven (7) days after the Effective Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by the Seller, nor does it create any rights or obligations in the parties except as set forth in RCW 64.06, as amended. Buyer is advised to use due diligence to inspect the Property to Buyer's satisfaction, subject to the terms of this Agreement, and the Seller may not have knowledge of defects that careful inspection might reveal. Buyer specifically acknowledges and agrees that the Seller Disclosure Statement is not part of this Agreement, Seller has no duties to the Buyer other than those set forth in this Agreement, including delivery of the completed environmental section of the Seller Disclosure Statement, Buyer has no independent cause of action under the Seller Disclosure Statement and specifically and without limitation, Buyer will not have a remedy for economic loss resulting from negligent errors, inaccuracies or omissions on the Seller Disclosure Statement.

6. Environmental Contingency. No later than five (5) business days after the Buyer has waived its Due Diligence Contingency, Seller shall apply to enroll the Property in the Washington State Department of Ecology (“DOE”) Voluntary Cleanup Program (“VCP”). Within five (5) business days after Seller provides Buyer with written notice from the DOE that the Property has been accepted in the VCP, Buyer shall contract, at Buyer's sole cost and expense, with an environmental consultant for the design of an Independent Remedial Action Plan (“IRAP”) for submission to DOE under the VCP. Buyer shall be solely responsible for all

costs associated with DOE's services under the VCP. No later than ten (10) days after Seller provides Buyer with DOE's written opinion under the VCP providing either (i) that upon completion of the proposed IRAP, no further remedial action will likely be necessary at the Property ("Likely NFA Letter"), or (ii) that the proposed IRAP does not meet the substantive requirements of the Washington State Model Toxics Control Act ("Likely FA Letter"), Buyer shall provide Seller with written notice that it is waiving the environmental contingency under this Paragraph. If Buyer fails to provide Seller with the written notice of waiver within the ten (10) days provided in this Paragraph, Buyer shall be deemed to have not waived the Environmental Contingency, this Agreement shall terminate, the Initial Deposit shall be returned to Buyer, and neither party shall have any further rights or obligations hereunder.

7. Condition of Property.

7.1 Buyer acknowledges and agrees that it shall be allowed to inspect the Property to Buyer's satisfaction and Seller shall provide Buyer with the Phase I Environmental Site Assessment Update and Supplemental Environmental Assessment for the Property prepared by Hart Crowser and dated October 31, 2005 ("Environmental Reports") with the other due diligence items identified in Paragraph 5.1 above.

7.2 Buyer shall release and forever discharge the Seller from all claims related to or arising from the presence of Hazardous Substances on the Property and/or the environmental condition of the Property. Except for the waiver, release and discharge of claims set forth above, nothing in the Agreement shall be construed to waive or discharge any other rights or claims that the Buyer may have or assert under Environmental Laws and Buyer shall have no obligation to indemnify, protect, defend or hold Seller harmless from claims arising as a result of any act or omission by Seller, or that relate to the period of time, prior to the Closing. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, including, without limitation petroleum oil and any of its fractions.

7.3 Subject to the Seller's express representations, warranties and obligations under this Agreement, **BUYER IS PURCHASING ITS INTERESTS IN THE PROPERTY IN AN "AS-IS" CONDITION BASIS WITH ANY AND ALL FAULTS, PATENT AND LATENT DEFECTS, KNOWN AND UNKNOWN, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE SELLER WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the condition or existence of any of the above ground or

underground structures or improvements, including tanks and transformers in, on or under the Property; and the condition of title to the Property (collectively, the “Condition of the Property”).

7.4 Buyer represents and warrants to the Seller that except for the Seller's express representations, warranties and obligations under this Agreement, the Buyer has not relied and will not rely on, and the Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Seller or any agent or contractor of the Seller, to whomever made or given, directly or indirectly, orally or in writing.

7.5 Buyer and Seller acknowledge that the Seller's willingness to convey the Property reflects that the Property is being conveyed subject to the provisions of this Paragraph 7.

7.6 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Paragraph 7 shall survive the Closing of the transaction contemplated herein and the delivery of the Deed to Buyer.

## 8. Closing Conditions.

8.1 Buyer's obligation to purchase the Property shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

8.1.1 All representations and warranties of the Seller contained herein shall be true, accurate and complete in all material respects as of the Effective Date and at the time of Closing as if made again at such time.

8.1.2 The Title Company shall be prepared to issue the Title Policy to the Buyer insuring Buyer's interest in the Property in the amount of the Purchase Price, subject to no exceptions other than the Permitted Exceptions.

8.1.3 Seller shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this subparagraph 8.1 are not satisfied as of Closing and the Buyer does not waive the same, the Seller and the Buyer shall extend the Closing Date an additional thirty (30) days. If the conditions set forth in this subparagraph 8.1 are not satisfied within such additional thirty (30) day period and the Buyer does not waive the same, then Buyer may pursue its remedies under Paragraph 13.1 below.

8.2 The Seller's obligation to sell the Property shall be subject to the following conditions that must be satisfied as of Closing:

8.2.1 All representations and warranties of the Buyer contained herein shall be true, accurate and complete in all material respects as of the Effective Date and at the time of Closing as if made again at such time;

8.2.2 The Buyer shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this subparagraph 8.2 are not satisfied as of Closing and the Seller does not waive the same, the Seller and the Buyer shall extend the Closing Date an additional

thirty (30) days. If the conditions set forth in this subparagraph 8.2 are not satisfied within such additional thirty (30) day period and the Seller does not waive the same, then Seller may pursue its remedies under Paragraph 13.2 below.

9. Representations and Warranties of the Seller. The Seller hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Seller to the Buyer as of the Effective Date and as of the Closing Date:

9.1 From the Effective Date to the Closing Date, the Seller will timely perform all of obligations required by the terms of this Agreement to be performed by the Seller.

9.2 From the Effective Date to the Closing Date, the Seller will notify the Buyer of any event of which the Seller becomes aware that affects the Property or any part thereof, promptly upon learning of the occurrence of such event.

9.3 The Seller is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby. No consent of any judicial or administrative body, governmental authority, or other governmental body or agency to such execution, delivery and performance by Seller is required. To Seller's actual knowledge, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which Seller is a party or by which Seller or the Property are bound; or (ii) violate any restriction, court order, agreement or other legal obligation to which Seller and/or the Property is subject.

9.4 From the Effective Date to the Closing Date, the Seller will not grant, create or amend any easement, right-of-way, encumbrance, restriction, covenant, lease, license, permit, option to purchase or other right which would affect the Property prior to or after Closing ("Third Party Interests") without the Buyer's written consent first having been obtained.

9.5 To the Seller's actual knowledge, there is no threatened lawsuit or material claim against or relating to the Seller with respect to the Property that would impede or materially affect the Seller's ability to perform the terms of this Agreement and there is no pending or, to the Seller's actual knowledge, contemplated condemnation or similar proceeding with respect to the Property or any part thereof.

9.6 There are no contracts of any kind relating to the management, leasing, operation, maintenance or repair of the Property that will survive Closing other than the Third Party Leases.

10. Representations and Warranties of the Buyer. The Buyer hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Buyer to the Seller as of the Effective Date and as of the Closing Date:

10.1 From the Effective Date to the Closing Date, the Buyer will timely perform all of obligations required by the terms of this Agreement to be performed by the Buyer.

10.2 The Buyer is a limited liability company of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby. No consent of any

creditor, investor, judicial or administrative body, governmental authority, or other governmental body or agency, or other party to such execution, delivery and performance by Buyer is required. To Buyer's actual knowledge, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which Buyer is a party or by which Buyer is bound; or (ii) violate any restriction, court order, agreement or other legal obligation to which Buyer is subject.

11. Closing.

11.1 Time and Place. The closing of the transaction contemplated by this Agreement ("Closing") shall take place at the offices of First American Title Insurance Company, \_\_\_\_\_, Seattle, Washington, escrow agent for the closing of this transaction ("Escrow Agent"), no later than thirty (30) days after waiver or completion of all contingencies in this Agreement, including the Environmental Contingency ("Closing Date"). The Closing Date may be extended by written agreement of the Parties.

11.2 Seller Obligations. At or before Closing, the Seller shall deliver to Escrow Agent, for delivery to the Buyer and/or Buyer, as applicable, the following:

11.2.1 The executed Deed, as described in Paragraph 4.1, in a form substantially as attached Exhibit B; and

11.2.2 An executed Bill of Sale for conveyance of any personal property in a form substantially as attached Exhibit D; and

11.2.3 An executed Assignment of Third Party Leases and Contracts, as described in Paragraph 4.4.1, in a form substantially as attached Exhibit C; and

11.2.4 An excise tax affidavit for the Property, signed by the responsible and authorized official of the Seller; and

11.2.5 Such other documents as may be required to close this transaction, including a Foreign Investment in Real Property Tax Act ("FIRPTA") certificate.

11.3 Buyer's Obligations. At or before Closing, the Buyer shall deliver to Escrow Agent, for delivery to the Seller the following:

11.3.1 The Purchase Price; and

11.3.2 An executed Assignment of Third Party Leases and Contracts; and

11.3.3 An executed excise tax affidavit for the Property, signed by the responsible and authorized officials of the Buyer; and

11.3.4 Such other documents and funds as may be required for Closing.

11.4 Proration. All taxes, fees and charges payable by governmental entities, including, without limitation, surface water management fees, noxious weeds fees and special district charges associated with the Property shall be prorated as of Closing.

11.5 Closing Costs. The Seller and the Buyer shall share equally the escrow fees with respect to the sale of the Property. Seller shall pay any and all applicable transfer taxes and the premium for a standard ALTA owner's title insurance policy. Buyer shall pay the difference in premium should Buyer request extended coverage.



With a copy to: Jameson Babbitt Stites & Lombard, PLLC  
801 Second Avenue, Suite 1000  
Seattle, WA 98104  
Attn: Sean Durbin  
Telephone 206 344-5288

15. Miscellaneous:

15.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

15.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the Property and any and all prior agreements, understandings or representations with respect to its subject matter, including the LOI with an effective date of July 17, 2014, are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

15.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto, and authorized by appropriate legislative actions of the Seller.

15.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

15.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. The Buyer, with Seller's prior written consent, may assign its interest in this Agreement to any entity in which Buyer or its constituent members has a controlling interest.

15.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

15.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

15.8 Exhibits and Schedules. This Agreement contains the following Exhibits, which are attached and made a part of this Agreement: Exhibits A, B, C and D and Schedule 1.

15.9 Brokers. Seller has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee based on the transaction contemplated by this Agreement. Buyer shall be solely responsible for paying the commission of any real estate broker it chooses to engage to assist with the transaction contemplated by this Agreement. Buyer shall pay the defense costs of, indemnify and hold Seller and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of any claims or actions arising from or related to any and all real estate broker commission claims and/or commission claims by any other person who can claim a right to a commission.

15.10 No Further Marketing of Property. From the Effective Date until Closing or until Buyer or Seller terminate this Agreement as provided in this Agreement, Seller will not negotiate in any way with any third party concerning the sale of the Property, including without limitation soliciting bids, considering offers or making offers or counteroffers, nor shall Seller enter into any contract(s) to sell the Property or any portion thereof.

15.10 Time. Time is of the essence of this Agreement.

15.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorney's fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

15.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties had prepared it.

15.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.14 Survival. The indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and its recordation. The representations and warranties made in this Agreement shall not merge into the Deed.

**TRF PACIFIC, LLC:**

**PORT OF SEATTLE:**

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

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

Exhibits:

- A Legal Description of Property
- B Bargain and Sale Deed
- C Assignment of Leases and Contracts
- D Bill of Sale
- Schedule 1 Third Party Leases and Contracts