

**ATTACHMENT B:
FIRST AMENDMENT TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

The undersigned parties, **KING COUNTY**, a political subdivision of the State of Washington (the “**Seller**”) and **TRC MARITIME PROPERTIES AND MARINA, LLC**, a Washington limited liability company (the “**Buyer**”), hereby agree to amend that certain Real Estate Purchase and Sale Agreement between the Parties with the Effective Date of September 28, 2017 (the “**Agreement**”). This “**First Amendment**” shall be effective as of the date it has been fully executed by both Parties.

RECITALS

A. Buyer and Seller are Parties to the Agreement by which Seller has agreed to sell and Buyer to purchase that certain real property located at 1111 Fairview Ave. N., Seattle, King County, State of Washington (the “Property”).

B. The Parties desire to amend certain provisions of the Agreement.

THEREFORE, for valuable consideration, the parties hereby mutually agree as follows:

1. The Agreement is hereby amended by striking Section 3.2.4 in its entirety and replacing it with the following:

3.2.4 SELLER’S SHARE OF CONSIDERATION UPON FUTURE CONVEYANCE.

Buyer shall pay to Seller a percentage (the “Profit Percentage”) of the Net Profit (hereinafter defined) received by Buyer in the event that a Conveyance (hereinafter defined) of Property shall occur at any time from and after the Closing Date and through and including the day that is four (4) years from the Closing Date (the “Participation Period”). The Profit Percentage shall be forty percent (40%) if the Conveyance occurs on or before the first anniversary of the Closing Date, shall be thirty percent (30%) if the Conveyance occurs after the first anniversary and before the second anniversary of the Closing Date, shall be twenty percent (20%) if the Conveyance occurs after the second anniversary and before the third anniversary of the Closing Date, and shall be ten percent (10%) if the Conveyance occurs after the third anniversary and before the fourth anniversary of the Closing Date. No percentage of the Net Profit shall be payable to Seller for any Conveyance after the fourth anniversary of the Closing Date, except such payment for a lease that qualifies as a “Conveyance” under subsection 3.2.4(a) below and is entered into within the Participation Period, will occur as provided in subsection 3.2.4(c). Such amounts shall be paid (i) for a sale, within thirty (30) days after receipt by Buyer of such consideration, or (ii) for a lease under subsection 3.2.4(c) within thirty (30) days of the Conveyance and, if applicable, within thirty (30) days of an option term commencement, as provided under subsection 3.2.4(c). Such amounts shall bear interest at a rate equal to ten percent (10%) per annum until paid.

(a) For the purposes of this Section 3.2.4, a “Conveyance” shall include any and all transfer, conveyance, sale, disposition, condemnation, assignment, encumbrance,

mortgage, pledge or grant of any legal or beneficial right, title or interest in the Property (or any portion of the Property), or the grant of an option with respect to any of the foregoing, by Buyer or Affiliate (hereinafter defined) and shall include a lease by Buyer or Affiliate to a tenant, the term of which, including any unilateral options held by tenant, is ten (10) years or more for all or substantial part of the Property, except as stated in subsection (b) below.

(b) Notwithstanding anything to the contrary herein, a Conveyance shall not include (1) any lease for actual occupancy of space by a tenant whose term, including any unilateral options held by tenant, is less than ten (10) years; (2) any grant of an easement, license, or other interest in the Property which does not provide the grantee, licensee or another party exclusive use or possession of all or a portion of the Property for a term greater than ten (10) years; (3) a transfer to an Affiliate without consideration or (4) the initial financing from Buyer's lender for the acquisition of the Property ("Acquisition Financing") that provides such financing in good faith and for value, provided such Acquisition Financing shall include only secured interests in the Property pursuant to a deed of trust or mortgage. Seller shall subordinate its interest hereunder to the deed of trust or mortgage securing Acquisition Financing pursuant to a subordination agreement in form reasonably required by Buyer's lender.

(c) The term "Affiliate" shall be defined as Buyer's parent companies, subsidiaries, or a company controlled by Buyer's parent companies, subsidiaries or the shareholders thereof, and all references to Buyer in this Section 3.2.4 shall also apply to an Affiliate. The term "Net Profit" shall be defined as the sales proceeds and all other sums received by or due to Buyer (or Affiliate) from the Conveyance ("Proceeds") after subtracting the actual and reasonable third party closing costs and the purchase price paid to Seller hereunder. Proceeds from a lease shall be calculated as follows: if the term of the lease is ten (10) years or more, including any unilateral options held by tenant, the Proceeds shall be the present value at the time of lease execution of the rent to be received during the original term of the lease, if that amount is ascertainable from the lease. If that amount is not ascertainable from the lease because the calculation of future rent relies on an index, market rate increase or other methodology that can only be determined in future years ("Variable Rent Increase Terms"), then a rate of three percent per year shall be used as a substitute for any Variable Rent Increase Terms. The Proceeds from an option term of a lease that is exercised by the tenant and which extends the term of the lease to be ten (10) years or more shall be the present value at the time of the commencement of the option term of the rent to be received during that option term of the lease, determined as set forth above. In such case for the purpose of calculating the Profit Percentage, the Conveyance will be considered to have occurred on the date of the execution of the original lease. In the event the Conveyance is only a portion of the Property, a proportionate share of the Proceeds paid to Seller shall be subtracted to determine the Net Profit. In the event that such proportionate amount shall be, in Seller's reasonable determination, an inaccurate measurement of the fair market value of the portion of the Property subject to the Conveyance, then the amount based on an appraisal of said portion of the Property (which shall be obtained at Buyer's cost and expense) shall be used in lieu of the actual amount paid by grantee of the Conveyance to calculate Net Profit.

(d) If Buyer desires to carry out a Conveyance of the Property, Buyer shall notify Seller in writing of said desire and the details of the proposed Conveyance at least twenty

(20) days prior to the proposed date of the Conveyance. The notification shall include but not be limited to a full disclosure of the monetary payment or any other consideration involved in the Conveyance of the Property and the proposed date of Conveyance. Buyer shall also provide any financial or other information regarding the proposed Conveyance reasonably requested by Seller. For a lease term that is extended to be ten (10) years or more through exercise of a unilateral option held by tenant, Buyer shall provide the information specified in this subsection at least twenty (20) days prior to the proposed extension.”

(e) A memorandum of this Section 3.2.4, Seller’s Share of Consideration upon Future Conveyance, in substantially the form attached hereto as **EXHIBIT E** shall be executed by Seller and Buyer and recorded against the Property at Closing. The obligations hereunder shall run with the land and be binding upon any Affiliate. In the event of a Conveyance to a party other than an Affiliate, the memorandum shall be released by Seller concurrently with such Conveyance provided that commercially reasonable arrangements have been made to provide for payment to Seller of the applicable Profit Percentage of the Net Profit.

(f) In the event that there shall be a foreclosure (judicial or non-judicial), or a deed in lieu of foreclosure of the Property, at any time on or prior to the expiration of the Participation Period, and Buyer or Affiliate shall have failed to pay any and all amounts of Profit Percentage due and owing hereunder, then Seller’s rights under this Section 3.2.4 shall be prior and superior to and over any and all recorded security interests in the Property that are then existing, except the security interests of a lender that provided Acquisition Financing and holds a recorded security interest in the Property pursuant to a deed of trust or a mortgage.

2. The Agreement is hereby amended by striking Section 3.3.4 in its entirety and replacing it with the following:

3.3.4. INDEMNIFICATION. From and after the Closing Date, Buyer shall indemnify, defend and hold Seller, its officers, agents and employees harmless from and against any and all Losses, liability, claim, agency order or requirement, damage and expense relating to or arising out of, directly or indirectly, the Property (hereinafter referred to collectively as “Property Claims”), including without limitation Property Claims relating to the actual or threatened release, disposal, deposit, seepage, migration or escape of Hazardous Substances at, from, into or underneath the Property (hereinafter referred to collectively as “Property Claims Arising from the Presence of any Hazardous Substances”), and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, Environmental Laws and regulations. As a partial guaranty of performance by Buyer of this Section 3.3.4, concurrently with closing, Buyer shall deliver to Seller a guaranty (the “Guaranty”) from an Affiliate of Buyer, in the form attached hereto as **EXHIBIT F**, together with evidence reasonably satisfactory to Seller that such Affiliate has a net worth of not less than Five Hundred Thousand Dollars (\$500,000). The Guaranty shall be limited to Property Claims Arising from the Presence of any Hazardous Substances and shall not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. The Guaranty shall terminate on the earlier of (a) ten (10) years after the Closing Date, (b) the date that Buyer has arranged for a substitute Guaranty with a different entity on the same terms as required herein in relation to a conveyance of the Property, or (c) the date that the Property has been condemned or conveyed in lieu of condemnation.

3. The Agreement is hereby amended by striking Exhibit E in its entirety and replacing it with the Exhibit E attached hereto and incorporated herein.

4. The Agreement is hereby amended by striking Exhibit F in its entirety and replacing it with the Exhibit F attached hereto and incorporated herein.

5. Capitalized terms used in this First Amendment and not otherwise defined in this First Amendment have the same meanings as in the Agreement. Except as amended by this First Amendment, the Agreement remains in full force and effect.

6. This First Amendment may be executed in identical counterparts, and may be delivered by email transmission. At the request of either Party, the Parties will deliver original ink signatures to each other.

EXECUTED on the dates set forth below.

SELLER: KING COUNTY

**BUYER: TRC MARITIME
PROPERTIES AND MARINA, LLC**

By: _____

By: _____

Name: Anthony Wright

Name: _____

Title: Director, Facilities Management Division

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Senior Deputy Prosecuting Attorney

EXHIBIT E.**Memorandum of Seller's Share of Consideration upon Future Conveyance**

After Recording, Return to:

Reference Number of Related Document: N/A

Grantor(s): TRC Maritime Properties and Marina, LLC

Grantee(s): King County

Abbreviated Legal Description: **[insert]**

Additional Legal Description is on Exhibit A of Document

Assessor's Property Tax Parcel or Account No.: _____

**MEMORANDUM OF SELLER'S SHARE OF CONSIDERATION UPON FUTURE
CONVEYANCE**

THIS MEMORANDUM OF SELLER'S SHARE OF CONSIDERATION UPON FUTURE CONVEYANCE is made this _____ day of _____, 2017, by and between TRC Maritime Properties and Marina, LLC, a Washington Limited Liability Company ("Buyer"), and King County, a political subdivision of the State of Washington ("Seller").

1. Pursuant to a Real Estate Purchase and Sale Agreement dated _____, 2017 ("PSA"), Buyer has, concurrently with the execution of this Memorandum, acquired the real property described on Exhibit A hereto ("Property"). Terms defined in the PSA shall have the same meaning herein.
2. Under the PSA, Seller is entitled to receive certain payments from Buyer or its Affiliate in the event of any Conveyance of the Property, which may include, as more specifically defined in the PSA, any and all transfer, conveyance, sale, disposition, condemnation, assignment, encumbrance, mortgage, pledge or grant of any legal or beneficial right, title or interest in the Property (or any portion of the Property), or the grant of an option with respect to any of the foregoing, or a lease with a term of ten (10) years or more, including any unilateral options held by tenant, for all or a substantial part of the Property.
3. This memorandum shall automatically terminate and be released on [_____], which is the day after the tenth anniversary of the last day of the Participation Period.

4. Seller's rights under Section 3.2.4 of the PSA shall be prior to and superior to and over any and all security interests in the Property, except the security interests of Buyer's lender for the acquisition of the Property that holds a recorded security interest in the Property pursuant to a deed of trust or a mortgage as provided in Section 3.2.4 of the PSA.

5. This Notice is for the sole purpose of providing notice of the PSA, and the PSA contains all terms and conditions of any payment due Seller in the event of a Conveyance. In the event of any conflict, the PSA shall govern over this memorandum.

DATED as of the day and year first above written.

KING COUNTY:

**TRC MARITIME PROPERTIES AND
MARINA, LLC:**

By: _____

By: _____

Name: Anthony Wright

Name: _____

Title: Director, Facilities Management Division

Title: _____

APPROVED AS TO FORM:

By: _____

Senior Deputy Prosecuting Attorney

EXHIBIT F.**GUARANTY**

THIS GUARANTY (this “**Guaranty**”) is made as of _____, 2017 by _____, a Washington _____, (“**Guarantor**”), in favor of and for the benefit of **KING COUNTY**, a political subdivision of the State of Washington (“**County**”).

WITNESSETH:

A. TRC Maritime Properties and Marina, LLC, a Washington limited liability company (“**Buyer**”), and County are parties to that certain Real Estate Purchase and Sale Agreement (“**PSA**”) dated as of _____, pursuant to which County has agreed to sell and Buyer has agreed to purchase that certain property located at 1111 Fairview Ave. N., Seattle, King County, State of Washington, the legal description of which is attached hereto as **EXHIBIT A.**

B. Pursuant to the PSA, Buyer is obligated to cause the execution and delivery of this Guaranty by Guarantor in order to induce County to consummate the transaction contemplated under the PSA.

NOW, THEREFORE, in consideration of the foregoing premises and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor unconditionally agrees as follows:

AGREEMENT:

1. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to County the prompt, unconditional and complete performance when due of all obligations and liabilities of Buyer for which Buyer is liable pursuant to Section 3.3.4 of the PSA for Property Claims Arising from the Presence of any Hazardous Substances up to an amount not to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate (“**Guaranteed Obligations**”). Unless indicated otherwise, all terms in this Guaranty have the same meaning as in the PSA.
2. Guarantor hereby agrees to maintain at all times Net Worth (hereinafter defined) of not less than Five Hundred Thousand Dollars (\$500,000). Net Worth shall mean as of any date of determination (i) Guarantor’s total assets as of such date less (ii) such Guarantor’s total liabilities as of such date determined in accordance with GAAP or federal income tax accounting basis.
3. Guarantor shall make available to the County for inspection, upon the County’s request from time to time but not more frequently than annually, reasonable evidence of the Net Worth to allow the County to confirm Guarantor’s compliance with its obligations and covenants set forth in Section 2 of this Guaranty. In the event that (a) there shall be any material change in Guarantor such that Guarantor reasonably does not anticipate that Guarantor will be able to maintain Net Worth as required hereunder; (b) Guarantor fails to maintain Net Worth for more

than sixty (60) days, or (c) Guarantor reasonably anticipates the occurrence of a merger or consolidation, or the transfer, sale or pledge of one-half (1/2) or more of the outstanding shares of any class of stock of Guarantor, Guarantor shall promptly inform County of any such event.

4. It is expressly understood and agreed that this is a continuing guaranty, and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances without regard to the validity, regularity or enforceability of the PSA, a true copy of which Guarantor hereby acknowledges having received and reviewed.

5. Guarantor agrees that with or without notice or demand, Guarantor will reimburse County to the extent that such reimbursement is not made by Buyer for all reasonable out-of-pocket expenses including counsel fees and disbursements incurred by County in connection with the enforcement or collection of the Guaranteed Obligations, or any portion thereof, or in connection with the enforcement of this Guaranty.

6. This is guaranty of payment and not of collection, and upon any default of Buyer of the Guaranteed Obligations, County may at its option proceed directly and at once without notice against Guarantor to collect and recover the full amount of the liability hereunder or any portion thereof without proceeding against Buyer or any other person. Guarantor hereby waives the pleading of any statute of limitations as defense to the obligation hereunder.

7. Each reference herein to County shall be deemed to include its successors and assigns to whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include the successors and assigns of Guarantor, all of whom shall be bound by the provisions of this Guaranty.

8. Any amounts that become due and payment by Guarantor under this Guaranty shall bear interest at rate per annum of twelve percent (12%) from the date such sums first become due and payable to the date that such sums are paid to County.

9. This Guaranty shall be governed construed and interpreted as to validity, enforcement and in all other respects in accordance with the laws of the State of Washington.

10. The Guaranty shall be limited to Property Claims Arising from the Presence of any Hazardous Substances and shall not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. This Guaranty shall terminate on the earlier of (a) ten (10) years after the Closing Date, (b) the date that Buyer has arranged for a substitute Guaranty with a different entity on the same terms has required herein in relation to a conveyance of the Property, or (c) the date that the Property has been condemned or conveyed in lieu of condemnation.

11. This Guaranty may be executed in any number of counterparts with the same effect as if all parties hereto had executed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The failure of any party hereto to execute this Guaranty, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

IN WITNESS WHEREOF, this Guaranty is executed as of the date first above written.

GUARANTOR:

a Washington _____

By: _____
Name: _____
Title: _____

KING COUNTY:

By: _____
Name: Anthony Wright
Title: Director, Facilities Management Division

APPROVED AS TO FORM:

By: _____
Senior Deputy Prosecuting Attorney

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be _____ of _____, and who executed the foregoing instrument and acknowledged to me that he/she was authorized to execute said instrument on behalf of _____ for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing

at _____
City and State

My appointment expires _____

STATE OF WASHINGTON)
) ss.
 County of King)

I hereby certify that I know or have satisfactory evidence that Anthony Wright is the person who appeared before me, and said person acknowledged that he signed this instrument as the Director of Facilities Management Division of the King County Department of Executive Services, and on oath stated that he was authorized to execute such instrument, and acknowledged it as the free and voluntary act of King County for the uses and purposes mentioned in this instrument.

Dated: _____, 20____.

 (Print Name) _____
 Notary Public in and for the State of Washington;
 Residing at _____
 My Commission expires _____