

**JOINT OPERATING AND INDEMNITY AGREEMENT  
FOR  
TACOMA NARROWS AIRPORT  
AND  
MADRONA LINKS GOLF COURSE**

THIS JOINT OPERATING AND INDEMNITY AGREEMENT (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 32 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County") and PENINSULA METROPOLITAN PARK DISTRICT, a Washington municipal corporation (hereinafter "PenMet Parks"). Pierce County and PenMet Parks may hereinafter collectively be referred to as "Parties" or individually as a "Party."

**RECITALS**

WHEREAS Pierce County and PenMets Parks, as co-purchasers, have entered into a purchase and sale agreement (hereinafter "PSA") with the City of Tacoma (hereinafter "Tacoma") as seller, pursuant to which Pierce County and PenMet Parks intend to acquire the real and personal property collectively and commonly known as the Tacoma Narrows Airport and the Madrona Links Golf Course and more particularly described therein. A true and correct copy of the PSA is attached as **Exhibit A**; and

WHEREAS Pierce County and PenMet Parks desire to set forth in this Agreement the terms, covenants and conditions pursuant to which they will: (a) exercise their rights and perform their duties as co-purchasers under the PSA prior to Closing; and (b) jointly own and operate the Tacoma Narrows Airport and the Madrona Links Golf Course after Closing.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pierce County and PenMet Parks agree as follows:

**AGREEMENT**

**1. Incorporation of Recitals.** The above recitals are incorporated herein by this reference.

**2. Definitions.**

**2.1 Terms Defined in PSA.** Terms defined in the PSA shall have the same meaning in this Agreement.

**2.2 Airport Real Property.** The term "Airport Real Property" shall mean the real property legally described in attached **Exhibit B**, together with: (a) any improvements and fixtures located thereupon; and (b) any rights, licenses, privileges, reversions, easements and

48 rights of way appurtenant thereto including, without limitation, all surface and subsurface  
49 mineral, oil, gas and other hydrocarbon substances, excluding Hazardous Substances in, on,  
50 under or about the Airport Real Property, all surface and subsurface development rights, air  
51 rights, water rights, water and water stock, and any other easements, rights of way or  
52 appurtenances used in connection with the beneficial use and enjoyment of the Airport Real  
53 Property.

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55 **2.3 Airport Personal Property.** The term "Airport Personal Property" shall  
56 mean the tangible and intangible personal property described in attached **Exhibit C**.

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58 **2.4 Golf Course Real Property.** The term "Golf Course Real Property" shall  
59 mean the real property legally described in attached **Exhibit D**, together with: (a) any  
60 improvements and fixtures located thereupon; and (b) any rights, licenses, privileges, reversions,  
61 easements and rights of way appurtenant thereto including, without limitation, all surface and  
62 subsurface mineral, oil, gas and other hydrocarbon substances, excluding Hazardous Substances  
63 in, on, under or about the Airport Real Property, all surface and subsurface development rights,  
64 air rights, water rights, water and water stock, and any other easements, rights of way or  
65 appurtenances used in connection with the beneficial use and enjoyment of the Golf Course Real  
66 Property.

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68 **2.5 Golf Course Personal Property.** The term "Golf Course Personal  
69 Property" shall mean the tangible and intangible personal property described in attached **Exhibit**  
70 **E**.

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72 **2.6 Collective References.**

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74 **2.6.1 Airport Real and Personal Property.** In addition to their  
75 individual references, the Airport Real Property and the Airport Personal Property may  
76 hereinafter be collectively referred to as "the Airport Real and Personal Property."

77  
78 **2.6.2 Golf Course Real and Personal Property.** In addition to their  
79 individual references, the Golf Course Real Property and the Golf Course Personal Property may  
80 hereinafter be collectively referred to as "the Golf Course Real and Personal Property."

81  
82 **3. Intent of Agreement.** Pierce County and PenMet Parks intend by this  
83 Agreement to exercise their rights and perform their duties under the PSA prior to Closing, and  
84 to own and operate the Tacoma Narrows Airport and the Madrona Links Golf Course after  
85 Closing, as if Pierce County is sole purchaser of the Airport Real and Personal Property for the  
86 sum of \$3 million and PenMet Parks is sole purchaser of the Golf Course Real and Personal  
87 Property for the sum of \$2 million. Accordingly, any conflict between this Section 3 and any  
88 other term, covenant or condition set forth in this Agreement shall be resolved in favor of the  
89 statement of intent set forth in this Section 3.

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91 **4. Payment of Purchase Price.**

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93 **4.1 Pierce County.** Pierce County shall be solely responsible for paying the  
94 \$3 million portion of the Purchase Price due at Closing as required by Section 2(a) of the PSA.

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96           **4.2 PenMet Parks.** PenMet Parks shall be solely responsible for paying the  
97 two (2) \$1 million installments of the Purchase Price due after Closing as required by Section  
98 2(b) of the PSA.

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100           **4.3 Forfeiture; Conveyance.** If PenMet Parks fails to pay either installment  
101 of the Purchase Price as required by Section 2(b) of the PSA and by Section 4.2 above, and  
102 Pierce County pays all or any part of the same on PenMet Parks' behalf, PenMet Parks shall  
103 thereupon automatically forfeit all of its right, title and interest in and to the Airport Real and  
104 Personal Property and the Golf Course Real and Personal Property and shall forthwith convey  
105 the same to Pierce County by instruments in a form set forth in Exhibits B and C to the PSA,  
106 subject only to the Permitted Exceptions.

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108           **5. Surveys for Extended Coverage Title Insurance.**

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110           **5.1 Pierce County.** Pierce County shall be solely responsible for obtaining  
111 and delivering to Closing Agent an acceptable survey of the Airport Real Property if required by  
112 Closing Agent as a condition to issuing the extended coverage policy of title insurance described  
113 in Section 3 of the PSA.

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115           **5.2 PenMet Parks.** PenMet Parks shall be solely responsible for obtaining  
116 and delivering to Closing Agent an acceptable survey of the Golf Course Real Property if  
117 required by Closing Agent as a condition to issuing the extended coverage policy of title  
118 insurance described in Section 3 of the PSA.

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120           **6. Approval of Title.**

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122           **6.1 Pierce County.** Pierce County shall be solely responsible for reviewing  
123 and approving in accordance with the procedures described in Sections 4.1 through 4.4 of the  
124 PSA that portion of the Preliminary Commitment associated with the Airport Real Property.

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126           **6.2 PenMet Parks.** PenMet Parks shall be solely responsible for reviewing  
127 and approving in accordance with the procedures described in Sections 4.1 through 4.4 of the  
128 PSA that portion of the Preliminary Commitment associated with the Golf Course Real Property.

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130           **7. Performance of Due Diligence Review.**

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132           **7.1 Pierce County.** Pierce County shall be solely responsible for conducting  
133 a Due Diligence Review of the Airport Real and Personal Property in accordance with Section 9  
134 of the PSA and shall report the results thereof to PenMet Parks not later than twenty (20)  
135 business days prior to expiration of the Due Diligence Period.

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137           **7.2 PenMet Parks.** PenMet Parks shall be solely responsible for conducting a  
138 Due Diligence Review of the Golf Course Real and Personal Property in accordance with  
139 Section 9 of the PSA and shall report the results thereof to Pierce County not later than twenty  
140 (20) business days prior to expiration of the Due Diligence Period.

142                   **7.3     Right of Access.**

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144                   **7.3.1   Pierce County.** Pierce County shall be solely responsible for  
145 arranging access to the Airport Real and Personal Property in accordance with Section 9.3 of the  
146 PSA.

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148                   **7.3.2   PenMet Parks.** PenMet Parks shall be solely responsible for  
149 arranging access to the Golf Course Real and Personal Property in accordance with Section 9.3  
150 of the PSA.

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152                   **7.4     Repair.**

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154                   **7.4.1   Pierce County.** Pierce County shall be solely responsible for  
155 repairing any damage to the Airport Real and Personal Property caused by its studies, tests,  
156 appraisals, investigations and inspections thereof pursuant to Section 9 of the PSA.

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158                   **7.4.2   PenMet Parks.** PenMet Parks shall be solely responsible for  
159 repairing any damage to the Golf Course Real and Personal Property caused by its studies, tests,  
160 appraisals, investigations and inspections thereof pursuant to Section 9 of the PSA.

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162                   **7.5     Disapproval; Termination.**

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164                   **7.5.1   Pierce County.** If, as a result of its Due Diligence Review of the  
165 Airport Real and Personal Property, Pierce County elects not to complete the transaction  
166 contemplated by the PSA, it shall immediately notify PenMet Parks thereof in writing,  
167 whereupon Pierce County and PenMet Parks shall jointly notify Tacoma and the FAA of their  
168 election to terminate the PSA pursuant to Section 9 thereof.

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170                   **7.5.2   PenMet Parks.** If, as a result of its Due Diligence Review of the  
171 Golf Course Real and Personal Property, PenMet Parks elects not to complete the transaction  
172 contemplated by the PSA, it shall immediately notify Pierce County thereof in writing,  
173 whereupon Pierce County may, in its sole and absolute judgment and discretion, elect to either:  
174 (a) purchase the Airport Real and Personal Property and the Golf Course Real and Personal  
175 Property without the participation of PenMet Parks, in which event PenMet Parks shall assign to  
176 Pierce County in writing all of right, title and interest in and to the PSA and the Airport Real and  
177 Personal Property and the Golf Course Real and Personal Property; or (b) elect to terminate the  
178 PSA pursuant to Section 9 thereof.

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180                   **8.     Closing Deliveries.**

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182                   **8.1     Pierce County.** Pierce County shall be solely responsible for  
183 delivering to Closing Agent the \$3 million portion of the Purchase Price due at Closing and shall  
184 join with PenMet Parks in delivering to Closing Agent the documents described in Section 18.2.2  
185 of the PSA.

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187                   **8.2     PenMet Parks.** PenMet Parks shall join with Pierce County in delivering  
188 to Closing Agent the documents described in Section 18.2.2 of the PSA.

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190 **9. Closing Costs; Prorations.**

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192 **9.1 Closing Costs.**

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194 **9.1.1 Pierce County.** At Closing, Pierce County shall pay: (a) three-  
195 fifths (3/5) of the additional premium, if any, attributable to the extended coverage owner's  
196 policy of title insurance covering both the Airport Real Property and the Golf Course Real  
197 Property; (b) the total cost of any extended coverage owner's policy of title insurance or title  
198 endorsement requested by Pierce County relating solely to the Airport Real Property; (c) any  
199 sales or use taxes arising from the transfer of the Airport Personal Property; (d) one-half (1/2) the  
200 cost of recording the Bargain and Sale Deed; (e) one-half of the escrow fee charged to Pierce  
201 County and PenMet Parks at Closing; (f) its own attorney fees; and (g) all other costs and  
202 expenses allocated to Pierce County or to the Airport Real and Personal Property under the PSA.  
203

204 **9.1.2 PenMet Parks.** At Closing, PenMet Parks shall pay: (a) two-  
205 fifths (2/5) of the additional premium, if any, attributable to the extended coverage owner's  
206 policy of title insurance covering both the Airport Real Property and the Golf Course Real  
207 Property; (b) the total cost of any extended coverage owner's policy of title insurance or title  
208 endorsement requested by PenMet Parks relating solely to the Golf Course Real Property; (c) any  
209 sales or use taxes arising from the transfer of the Golf Course Personal Property; (d) one-half  
210 (1/2) the cost of recording the Bargain and Sale Deed; (e) one-half of the escrow fee charged to  
211 Pierce County and PenMet Parks at Closing; (f) its own attorney fees; and (g) all other costs and  
212 expenses allocated to PenMet Parks or to the Golf Course Real and Personal Property under the  
213 PSA.  
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215 **9.2 Prorations.**

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217 **9.2.1 Pierce County.** At Closing, Pierce County shall receive the  
218 benefit of all prorated income and shall pay all expenses of the Airport Real and Personal  
219 Property.  
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221 **9.2.2 PenMet Parks.** At Closing, PenMet Parks shall receive the  
222 benefit of all prorated income and shall pay all prorated expenses of the Golf Course Real and  
223 Personal Property.  
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225 **10. Federal Aviation Administration Grant Assurances.**

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227 **10.1 Pierce County.** From and after Closing, Pierce County shall be solely  
228 responsible for complying with any and all FAA Grant Assurances applicable to and/or  
229 associated with the Airport Real Property and with all applicable federal laws, regulations,  
230 executive orders, policies, guidelines and requirements relating thereto.  
231

232 **10.2 PenMet Parks.** From and after Closing, PenMet Parks shall be solely  
233 responsible for complying with any and all FAA Grant Assurances applicable to and/or  
234 associated with the Golf Course Real Property and with all applicable federal laws, regulations,  
235 executive orders, policies, guidelines and requirements relating thereto.

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**11. License for Passive Recreational Uses.** From and after Closing, PenMet Parks shall have a right, in the nature of a revocable license, to use and occupy that portion of the Airport Real Property legally described in attached **Exhibit F** (hereinafter "Passive Recreation Area") for such passive recreational uses as may be permitted under the FAA Grant Assurances; provided, however, if Pierce County elects to use all or any portion of the Passive Recreation Area for any airport purpose that Pierce County determines in its sole and absolute judgment and discretion is incompatible with any such passive recreational use, PenMet Parks shall, upon Pierce County's written demand, vacate the Passive Recreation Area or the appropriate portion thereof designated by Pierce County, as the case may be, and remove any of its personal property, fixtures, and/or other improvements therefrom.

**12. Performance of Contracts.**

**12.1 Pierce County.** From and after to Closing, Pierce County shall be solely responsible for performing, according to their terms, all contracts assigned by Tacoma to Pierce County and PenMet Parks at Closing that relate to the Tacoma Narrows Airport and/or the Airport Real and Personal Property

**12.2 PenMet Parks.** From and after Closing, PenMet Parks shall be solely responsible for performing, according to their terms, all contracts assigned by Tacoma to Pierce County and PenMet Parks at Closing that relate to the Madrona Links Golf Course and/or the Golf Course Real and Personal Property.

**13. Conduct of Business.**

**13.1 Pierce County.** From and after Closing, Pierce County shall be solely responsible for: (a) maintaining the Airport Real and Personal Property in good repair and in a safe, clean, neat and sanitary condition; (b) supervising, managing, using, operating, protecting, maintaining and repairing the Tacoma Narrows Airport and the Airport Real and Personal Property in a businesslike manner in accordance with practices standard in the airport management industry and with all statutes, ordinances, codes, rules and/or regulations applicable to the Airport Real and Personal Property including, without limitation, all applicable federal laws, regulations, executive orders, policies, guidelines and requirements relating thereto; (c) maintaining full and complete books, records and accounts relating to its supervision, management, use, operation, protection, maintenance and repair of the Airport Real and Personal Property in accordance with generally accepted municipal accounting principles; and (d) not committing any waste or nuisance in, on, under or about the Airport Real Property or Personal Property.

**13.2 PenMet Parks.** From and after Closing, PenMet Parks shall be solely responsible for: (a) maintaining the Golf Course Real and Personal Property in good repair and in a safe, clean, neat and sanitary condition; (b) supervising, managing, using, operating, protecting, maintaining and repairing the Madrona Links Golf Course and the Golf Course Real and Personal Property in a businesslike manner in accordance with practices standard in the golf course management industry and with all statutes, ordinances, codes, rules and/or regulations applicable to the Golf Course Real and Personal Property including, without limitation, all

283 applicable federal laws, regulations, executive orders, policies, guidelines and requirements  
284 relating thereto; (c) maintaining full and complete books, records and accounts relating to its  
285 supervision, management, use, operation, protection, maintenance and repair of the Golf Course  
286 Real and Personal Property in accordance with generally accepted municipal accounting  
287 principles; and (d) not committing any waste or nuisance in, on, under or about the Golf Course  
288 Real Property or Personal Property.

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290 **14. Release from FAA Grant Assurances.** Within ninety (90) calendar days after  
291 Closing, PenMet Parks shall: (a) initiate with the FAA the process of obtaining a full and final  
292 release of the Golf Course Real Property from the FAA Grant Assurances; (b) use its good faith  
293 and continuing best efforts to complete said process without delay; and (c) pay, in addition to its  
294 \$2 million share of the Purchase Price, any and all monies to Pierce County's Airport  
295 Improvement Program Fund as the FAA may require to effect such release.

296  
297 **15. Conveyances.** Within thirty (30) calendar days after PenMet Parks obtains the  
298 release of the Golf Course Real Property from the FAA Grant Assurances as described in Section  
299 14 above: (a) Pierce County shall, without additional consideration from PenMet Parks, convey  
300 title to the Golf Course Real and Personal Property to PenMet Parks by means of the instruments  
301 described in Section 5 of the PSA, subject only to the Permitted Exceptions; and (b) PenMet  
302 Parks shall, without additional consideration from Pierce County, convey title to the Airport Real  
303 and Personal Property to Pierce County by means of the instruments described in Section 5 of the  
304 PSA, subject only to the Permitted Exceptions.

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306 **16. Risk of Loss.**

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308 **16.1 Pierce County.** From and after Closing, risk of loss of or damage to the  
309 Airport Real and Personal Property shall be borne solely by Pierce County.

310  
311 **16.2 PenMet Parks.** From and after Closing, risk of loss of or damage to the  
312 Golf Course Real and Personal Property shall be borne solely by PenMet Parks.

313  
314 **17. Insurance.**

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316 **17.1 Pierce County's Insurance Obligations.**

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318 **17.1.1 Insurance Policies.** From and after Closing, Pierce County shall  
319 provide, and shall keep in full force and effect until PenMet Parks receives title to the Golf  
320 Course Real and Personal Property as provided in Section 15 above, the following insurance  
321 coverages naming Pierce County and PenMet Parks as insured parties: (a) a commercial liability  
322 insurance policy ("Liability Policy"), including, without limitation, blanket contractual liability  
323 coverage, broad form property damage, independent contractor's coverage and personal injury  
324 coverage of not less than \_\_\_\_\_ AND NO/100 DOLLARS  
325 (\$\_\_\_\_\_) combined single limit per occurrence for bodily or personal injury (including  
326 death) and property damage, protecting Pierce County, its elected and appointed officials,  
327 servants, agents, contractors and employees, and PenMet Parks, and its elected and appointed  
328 officials, servants, agents, contractors and employees, against liability occasioned by occurrences  
329 in, on or about the Airport Real Property or any appurtenances thereto; and (b) a fire and other

330 casualty policy (“Fire Policy”) insuring the full replacement value of any structures,  
331 improvements, fixtures, furnishings, machinery, equipment and/or other personal property of  
332 Pierce County located on, in or about the Airport Real Property with a deductible of not more  
333 than \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_), against  
334 loss or damage by fire, theft and such other risks or hazards as are insurable under present and  
335 future forms of “All Risk” insurance policies. All policies are to be written by good and solvent  
336 insurance companies licensed to do business in the state of Washington and that are satisfactory  
337 to PenMet Parks, and must contain endorsements requiring written notice to PenMet Parks thirty  
338 (30) calendar days prior to any cancellation or reduction in amount of coverage. Pierce County  
339 shall, within ten (10) business days after a written request from PenMet Parks therefor, furnish  
340 PenMet Parks with such additional information as PenMet Parks may reasonably request from  
341 time to time as to the value of any structures, improvements, fixtures, furnishings, machinery,  
342 equipment and/or other personal property of Pierce County located in, on, or about the Airport  
343 Real Property.

344  
345 **17.1.2 Waiver of Subrogation.** Pierce County shall, at its sole cost and  
346 expense, include in its insurance policies appropriate clauses pursuant to which the insurance  
347 companies waive all right of subrogation against PenMet Parks with respect to losses payable  
348 under such policies and agree that such policies shall not be invalidated if, prior to a loss, the  
349 insured waives, in writing, any or all right of recovery against any party for losses covered by  
350 such policies. Pierce County shall furnish to PenMet Parks, upon written demand, evidence  
351 satisfactorily establishing the inclusion of the above clause in its insurance policies.

352  
353 **17.1.3 Waiver of Claims.** Provided that Pierce County's right of full  
354 recovery under its fire insurance policy is not adversely affected or prejudiced thereby, Pierce  
355 County hereby waives any and all right of recovery which it might otherwise have against  
356 PenMet Parks or its elected or appointed officials, servants, agents or employees for loss or  
357 damage to Pierce County's personal property located in, on, under or about the Airport Real  
358 Property to the extent the same is covered by PenMet Parks' insurance, notwithstanding that such  
359 loss or damage may result from the negligence or fault of PenMet Parks, its elected or appointed  
360 officials, servants, agents or employees.

361  
362 **17.1.4 Self Insurance.** The provisions of Section 17.1.1 through Section  
363 17.1.3 notwithstanding, PenMet Parks acknowledges, accepts and agrees that Pierce County is  
364 self-insured for all insurance coverages required by this Section 17.1 and that Pierce County  
365 shall provide proof of such self-insurance upon the written request of PenMet Parks. In this  
366 regard, PenMet Parks shall be treated as an additional insured under Pierce County's liability  
367 self-insurance program with respect to the terms and conditions of this Agreement.

368  
369 **17.2 PenMet Parks Insurance Obligations.**

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371 **17.2.1 Insurance Policies.** From and after Closing, PenMet Parks shall  
372 provide, and shall keep in full force and effect until it receives title to the Golf Course Real and  
373 Personal Property as provided in Section 15 above, the following insurance coverages naming  
374 Pierce County and PenMet Parks as insured parties: (a) a commercial liability insurance policy  
375 (“Liability Policy”), including, without limitation, blanket contractual liability coverage, broad  
376 form property damage, independent contractor’s coverage and personal injury coverage of not

377 less than \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_)  
378 combined single limit per occurrence for bodily or personal injury (including death) and property  
379 damage, protecting Pierce County, its elected and appointed officials, servants, agents,  
380 contractors and employees, and PenMet Parks, and its elected and appointed officials, servants,  
381 agents, contractors and employees, against liability occasioned by occurrences in, on or about the  
382 Golf Course Real Property, the Recreation Area, or any appurtenances to either; and (b) a fire  
383 and other casualty policy (“Fire Policy”) insuring the full replacement value of any structures,  
384 improvements, fixtures, furnishings, machinery, equipment and/or other personal property of  
385 PenMet Parks located on, in or about the Golf Course Real Property with a deductible of not  
386 more than \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_),  
387 against loss or damage by fire, theft and such other risks or hazards as are insurable under  
388 present and future forms of “All Risk” insurance policies. All policies are to be written by good  
389 and solvent insurance companies licensed to do business in the state of Washington and that are  
390 satisfactory to Pierce County, and must contain endorsements requiring written notice to Pierce  
391 County thirty (30) calendar days prior to any cancellation or reduction in amount of coverage.  
392 PenMet Parks shall, within ten (10) business days after a written request from Pierce County  
393 therefor, furnish Pierce County with such additional information as Pierce County may  
394 reasonably request from time to time as to the value of any structures, improvements, fixtures,  
395 furnishings, machinery, equipment and/or other personal property of PenMet Parks located in,  
396 on, or about the Golf Course Real Property.  
397

398 **17.2.2 Waiver of Subrogation.** PenMet Parks shall, at its sole cost and  
399 expense, include in its insurance policies appropriate clauses pursuant to which the insurance  
400 companies waive all right of subrogation against Pierce County with respect to losses payable  
401 under such policies and agree that such policies shall not be invalidated if, prior to a loss, the  
402 insured waives, in writing, any or all right of recovery against any party for losses covered by  
403 such policies. PenMet Parks shall furnish to Pierce County, upon written demand, evidence  
404 satisfactorily establishing the inclusion of the above clause in its insurance policies.  
405

406 **17.2.3 Waiver of Claims.** Provided that PenMet Parks’ right of full  
407 recovery under its fire insurance policy is not adversely affected or prejudiced thereby, PenMet  
408 Parks hereby waives any and all right of recovery which it might otherwise have against Pierce  
409 County or its elected or appointed officials, servants, agents or employees for loss or damage to  
410 PenMet Parks' personal property located in, on under or about the Golf Course Real Property to  
411 the extent the same is covered by PenMet Parks' insurance, notwithstanding that such loss or  
412 damage may result from the negligence or fault of Pierce County, its elected or appointed  
413 officials, servants, agents or employees.  
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## 415 **18. Indemnification**

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417 **18.1 Pierce County.** Pierce County shall indemnify, defend, and hold PenMet  
418 Parks harmless from all claims, liabilities, costs, attorney fees and expenses of any kind, type or  
419 nature whatsoever arising out of or in any way relating to: (a) Pierce County's use or occupancy  
420 of the Airport Real Property and/or the Airport Personal Property; (b) any activity, work or thing  
421 done, permitted or suffered by Pierce County in, on, under or about the Airport Real Property;  
422 (c) any breach or default in the performance of any obligation to be performed solely by Pierce  
423 County under the terms of the PSA or this Agreement; or (d) any act or omission of Pierce

424 County or of its elected or appointed officials, agents, contractors or employees caused by  
425 negligence or willful misconduct and then only to the extent of its or their proportionate share of  
426 liability. Pierce County's obligation to indemnify, defend and hold PenMet Parks harmless under  
427 this Section 18.1 includes an obligation to indemnify for losses resulting from death or injury to  
428 Pierce County's elected or appointed officials, servants, agents or employees, and Pierce County  
429 accordingly hereby waives any and all immunities it now has or hereafter may have under Title  
430 51 RCW (Industrial Insurance), or other worker's compensation, disability benefit or other  
431 similar act that would otherwise be applicable in the case of such a claim, and further  
432 acknowledges that such waiver was mutually negotiated by the parties as required by RCW  
433 4.24.115.

434  
435 **18.2 PenMet Parks.** PenMet Parks shall indemnify, defend, and hold Pierce  
436 County harmless from all claims, liabilities, costs, attorney fees and expenses of any kind, type  
437 or nature whatsoever arising out of or in any way relating to: (a) PenMet Parks' use or  
438 occupancy of the Golf Course Real Property and/or the Golf Course Personal Property; (b) any  
439 activity, work or thing done, permitted or suffered by PenMet Parks in, on, under or about the  
440 Golf Course Real Property; (c) any breach or default in the performance of any obligation to be  
441 performed solely by PenMet Parks under the terms of the PSA or this Agreement; or (d) any act  
442 or omission of PenMet Parks or of its elected or appointed officials, agents, contractors or  
443 employees caused by negligence or willful misconduct and then only to the extent of its or their  
444 proportionate share of liability. PenMet Parks' obligation to indemnify, defend and hold Pierce  
445 County harmless under this Section 18.2 includes an obligation to indemnify for losses resulting  
446 from death or injury to PenMet Parks' elected or appointed officials, servants, agents or  
447 employees, and PenMet Parks accordingly hereby waives any and all immunities it now has or  
448 hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's compensation,  
449 disability benefit or other similar act that would otherwise be applicable in the case of such a  
450 claim, and further acknowledges that such waiver was mutually negotiated by the parties as  
451 required by RCW 4.24.115.

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453 **19. Notices.** All notices shall be in writing and shall be sent by either: (a) United  
454 States mail, return receipt requested; (b) recognized overnight express service; or (c) fax to the  
455 address of such person as set forth in this Agreement, or such address or addresses designated in  
456 writing from time to time. The notice shall be deemed delivered on the earlier of: (a) three (3)  
457 business days after deposited in the United States mail; (b) the delivery date as shown in the  
458 regular business records of the overnight courier service; or (c) the date of automatic confirmed  
459 receipt by the recipient's fax, as the case may be. Notices shall be sent to:

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461 Pierce County: Pierce County Public Works & Utilities Division  
462 Tacoma Mall Plaza Building  
463 2702 South 42nd Street, Suite 201  
464 Tacoma, WA 98409-7322  
465 Telephone: 253-798-7250  
466 Facsimile: 253-798-2740  
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Copy to: Pierce County Prosecuting Attorney/Civil Division  
955 Tacoma Avenue South, Suite 301  
Tacoma, WA 98402-2160  
Telephone: 253-798-6732  
Facsimile: 253-798-6713

PenMet Parks: Peninsula Metropolitan Park District  
Attn: Executive Director  
3614 Grandview Street  
Gig Harbor, WA 98335  
Telephone: 253-858-3400  
Facsimile: 253-858-3401

Copy to: Mark R. Roberts  
Davis Roberts & Johns, PLLC  
7525 Pioneer Way, Suite 202  
Gig Harbor, WA 98335  
Telephone: 253-858-8606  
Facsimile: 253-858-8646

Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

**20. Default; Remedies.** If either Pierce County or PenMet Parks defaults under this Agreement, the non-defaulting Party shall be entitled: (a) to seek specific performance of the defaulting Party's obligations; or (b) to seek damages arising out of any default under this Agreement.

**21. Attorneys' Fees/Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Agreement shall be entitled to recover reasonable costs and attorney fees (including, without limitation, reasonable costs and attorney fees incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

**22. Negotiation and Construction.** This Agreement was negotiated by the Parties with the assistance of their own legal counsel and, therefore, shall not be interpreted strictly for or against any Party. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington.

**23. Time.** Time is of the essence of this Agreement and of every term and provision hereof.



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**PIERCE COUNTY:**

Approved as to Legal Form Only:

\_\_\_\_\_  
Deputy Prosecuting Attorney      Date

\_\_\_\_\_  
Director, Public Works & Utilities      Date

\_\_\_\_\_  
Director, Budget & Finance      Date

Final Action:

\_\_\_\_\_  
Pierce County Executive      Date

**PENMET PARKS:**

Approved as to Legal Form Only:

\_\_\_\_\_  
Legal Counsel      Date

Final Action:

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

***[ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGE]***

586 STATE OF WASHINGTON )  
587 ) ss.  
588 COUNTY OF PIERCE )

589  
590 On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a notary  
591 public in and for the state of Washington, duly commissioned and sworn, personally appeared  
592 \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Peninsula Metropolitan  
593 Park District, a Washington municipal corporation, who executed the within and foregoing  
594 instrument and acknowledged the said instrument to be the free and voluntary act and deed of  
595 said municipal corporation for the uses and purposes therein mentioned, and on oath stated that  
596 he/she is authorized to execute the said instrument.

597 In witness whereof, I have hereunto set my hand and affixed my official seal the day and  
598 year first above written.

599  
600 \_\_\_\_\_

601 NOTARY SIGNATURE

602  
603 PRINTED NAME \_\_\_\_\_

604 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

605 RESIDING AT \_\_\_\_\_

606 MY COMMISSION EXPIRES \_\_\_\_\_

607  
608 STATE OF WASHINGTON )  
609 ) ss.  
610 COUNTY OF PIERCE )

611  
612 On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a notary public in  
613 and for the state of Washington, duly commissioned and sworn, personally appeared John W.  
614 Ladenburg, known to me to be the Executive of Pierce County, Washington, a municipal  
615 corporation and political subdivision of the state of Washington, who executed the within and  
616 foregoing instrument and acknowledged the said instrument to be the free and voluntary act and  
617 deed of said municipal corporation for the uses and purposes therein mentioned, and on oath  
618 stated that he is authorized to execute the said instrument.

619 In witness whereof, I have hereunto set my hand and affixed my official seal the day and  
620 year first above written.

621  
622 \_\_\_\_\_

623 NOTARY SIGNATURE

624  
625 PRINTED NAME \_\_\_\_\_

626 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

627 RESIDING AT \_\_\_\_\_

628 MY COMMISSION EXPIRES \_\_\_\_\_

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**EXHIBIT A**  
(Purchase and Sale Agreement)

632  
633

**EXHIBIT B**  
(Legal Description of Airport Real Property)

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**EXHIBIT C**  
(Schedule of Airport Personal Property)

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**EXHIBIT D**  
(Legal Description of Golf Course Real Property)

638  
639

**EXHIBIT E**  
(Schedule of Golf Course Personal Property)

640  
641  
642

**EXHIBIT F**  
(Legal Description of Passive Recreation Area)