

**AMENDMENT TO PROPOSED TRANSACTION TERMS  
FOR EXPANSION OF STADIUM  
September \_\_, 2017**

This AMENDMENT TO PROPOSED TRANSACTION TERMS FOR EXPANSION OF STADIUM (this "Amendment") is entered into by and between The City of Portland, a municipal corporation of the State of Oregon (the "City"), acting by and through the Office of Management and Finance ("OMF") and Peregrine Sports LLC, a Delaware limited liability company ("Peregrine").

**RECITALS**

- A. Peregrine has proposed an expansion of the Stadium to add capacity for 3,000 - 4,000 additional attendees (the "Expansion"), as detailed in the Proposed Transaction Terms for Expansion Of Stadium (the "Term Sheet") authorized by City Council on June 21, 2017, in Resolution No. 37299 (the "Resolution"). The Resolution directs that the City develop formal agreements and amendments to the RDA, SOA, and Related Agreements as needed to allow the design, financing, and construction of the Expansion (the "Definitive Agreements").
- B. On July 3, 2017, the City sent Peregrine a letter regarding the Process for Proposed Expansion of Providence Park Stadium (the "Enhancement Letter") with Addenda detailing such process for the Expansion (each an "Addendum" and collectively the "Addenda").
- C. Preparatory construction activities for the Expansion must commence on or around October 2, 2017, prior to the anticipated date for executing the Definitive Agreements, to achieve the Phase 1 construction schedule for the Expansion. The construction activities allowed under this Amendment will include only those activities listed on Schedule A attached hereto (the "Initial Work").
- D. Accordingly, the City and Peregrine desire to amend the Term Sheet as provided in this Amendment in order to provide for the Initial Work to be performed. Defined terms used in this Amendment but not otherwise defined herein shall have the meanings set forth in the Term Sheet.

**AGREEMENT**

- 1. **Commencement of Initial Work.** Subject to gaining the City's approval in its regulatory capacity, the provisions of Addenda 1-3 of the Enhancement Letter, this Amendment, and any other Addenda executed by the City and Peregrine after this Amendment, Peregrine may commence Initial Work.
- 2. **Peregrine's Make Whole Obligation.**
  - 2.1. If the City does not approve the Definitive Agreements or the Expansion is otherwise terminated, Peregrine shall restore, to a comparable standard as existed immediately prior to the commencement of the Initial Work, all those portions of the Stadium that were removed, dismantled, or demolished during Initial Work or, in the alternative, such other condition as agreed to by the parties in writing, in each party's sole and absolute discretion ("Make Whole Obligation").

## EXHIBIT A

- 2.2. Recognizing that performance of the Make Whole Obligation cannot restore the City's property and improvements to a condition that is identical to the condition that existed prior to the commencement of the Initial Work, Peregrine agrees to bring the City's property and improvements to a condition which is in all respects at least as good or better than such preexisting condition.
- 2.3. Peregrine agrees to pay all costs of the Initial Work and its Make Whole Obligation.
- 2.4. Upon execution of the Definitive Agreements by the City and Peregrine, Peregrine's Make Whole Obligation under this Amendment shall be automatically replaced by a completion and make whole agreement in the Definitive Agreements, which shall be applicable to the Initial Work.
3. **Insurance.** Prior to beginning the Initial Work, Peregrine will provide certificates of insurance evidencing that Peregrine, Turner, and any Retained Parties working on the Initial Work have obtained the insurance required by Schedule B.
4. **Miscellaneous.**
  - 4.1. Effect of Amendment. Except as specifically set forth in this Amendment, the Term Sheet is unmodified and is hereby ratified and remains in full force and effect. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Term Sheet, the terms and provisions of this Amendment shall control. This Amendment constitutes the entire agreement of the parties with respect to the subject matter hereof, and once executed and delivered, shall not be modified or altered in any respect except by a written instrument signed by the parties hereto.
  - 4.2. Amendment Binding on Parties. Notwithstanding the non-binding nature of the Term Sheet, this Amendment, including, but not limited to Peregrine's Make Whole Obligation and the requirement to obtain the Insurance, is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.
  - 4.3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Oregon.
  - 4.4. Counterparts; Signatures. This Amendment may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same instrument. Electronic signatures or delivery of copies of manual signatures by facsimile or email shall be sufficient to bind the parties hereto.

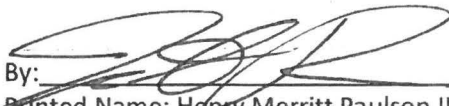
*(Remainder of Page Intentionally Left Blank; Signature Page Follows)*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

City of Portland

Peregrine Sports LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: Ted Wheeler  
Title: Mayor  
Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Printed Name: Henry Merritt Paulson III  
Title: Manager  
Date: 9-18-17

**Schedule A****INITIAL WORK**

The construction activities allowed under this Amendment will include only the following activities:

- Provide access from the field level to the sloped area under the concourse at the generator area.
- Demo shaftwall at the east face of field level area to make access at each proposed new column.
- Install handrail and remove filter fabric at the sloped areas.
- Install access path within the sloped areas.
- Provide lighting at the sloped areas.
- Excavation to create access, temporary footings, and pile excavation at the sloped areas and along the east wall of the field level at each proposed column location.
- Core a 12" hole through the concourse deck along the north end of the fence for concrete hose placement access, provide a temporary steel cover.
- Place concrete pads for temporary shoring at the sloped areas under the concourse.
- Install shoring under the concourse at the sloped areas under the concourse.
- Removal of Street Trees
- Demolition of Curbs and Sidewalks
- Demolition and Excavation in ROW for New Piles
- Fire Hydrant Relocation
- Removal of all Street Lighting
- Install Temp Lighting
- Demolition for new Signal/Mast Pole Base
- Demolition for new OCS
- Demolition of Club Level Finishes – All Areas
- Demolition of Timbers Store
- Demolition of Restroom Entry Areas
- MEP Safe Off and Reroute – All Areas
- Frame, MEP Rough In and Cover Inspection for new Water Room – South Area
- Frame, MEP Rough In and Cover Inspection for new Electrical Room – MSE Area
- Installation of revised signal pole bases and relocation of the signals (including ped & traffic signals).
- Installation of temporary OCS (TriMet) poles and the relocation of TriMet's overhead lines.
- Installation of new permanent OCS (TriMet) foundations.
- Installation of temporary street lighting.
- Removal of all sidewalks, curbs, and portions of the street.
- SW 18<sup>th</sup> Avenue closed to allow for foundations and utility relocates.
- North Concourse Area
  - Removal of the team store, concourse shoring, KBC shoring, and removal of all finishes on the FL, KBC, and concourse to allow for foundation & structural work (including slabs, walls, ceilings, and all finishes). Essentially, the whole concourse level slab will be removed including much of the steel framing.
  - MEP safeoff and re-routing as needed all levels.

- Excavation for pile caps and micropiles will be installed.
- Concrete pile caps and column installation.
- Central Concourse Area
  - Concourse shoring, KBC shoring, and removal of all finishes on the FL, KBC, and concourse to allow for foundation & structural work (including slabs, walls, ceilings, and all finishes). Essentially, the whole concourse level slab will be removed, large portions of the KBC club will be removed, and the FL eastern-most wall and large portions of the slab will be removed.
  - MEP safeoff and re-routing as needed all levels.
  - Excavation for pile caps and micropiles will be installed.
- South Concourse Area
  - Concourse shoring, KBC shoring, and removal of all finishes on the FL, KBC, and concourse to allow for foundation & structural work (including slabs, walls, ceilings, and all finishes). Essentially, the whole concourse level slab will be removed, large portions of the KBC club will be removed, and the FL eastern-most wall and large portions of the slab will be removed.
  - Demolition of Providence Clinic's 4 eastern most exam rooms and installation of a temporary wall.
  - MEP safeoff and re-routing as needed all levels.
  - Excavation for pile caps and micropiles will be installed.
- FL – Fire Riser Room
  - Re-building the riser room, complete. All trades.
- FL – Electrical Room
  - Re-building the electrical room, complete. All trades
- FL – Tanner Combo Sewer
  - Tanner combo sewer bridge construction.
- FL – Storm Detention
  - Installation of detention system. Including all sanitary sewer and storm water underground piping and subsequent slab pour backs.
- FL / Concourse Level
  - Tower crane foundation and crane installation.



**Schedule B****INSURANCE****SECTION 23 INSURANCE DURING CONSTRUCTION**

Peregrine shall maintain the insurance required by this Agreement in full force and effect starting from the earlier of (a) the date of the Council Meeting or (b) commencement of construction of the Project (the "Insurance Start Date"), and ending at Final Completion of the Project unless otherwise specified herein. Thereafter, the insurance requirements of the Operating Agreement shall govern and control. Peregrine shall deliver to the City certificates of insurance evidencing the required policies and coverages at least fifteen (15) calendar days prior to the Insurance Start Date.

Peregrine shall further require its Retained Parties to maintain the insurance set forth in this Agreement.

Peregrine shall cause the Contractor to provide the general liability coverages for Peregrine and the Contractor through a contractor controlled insurance program, or "wrap" policy (the "Wrap") with Peregrine as a named insured. Peregrine shall deliver the Wrap policy to the City at least fifteen (15) days prior to the Insurance Start Date for the City's review and approval.

**23.1 Insurance to be Carried by Peregrine**

Peregrine must maintain all of the insurance required by this Section 23.1 in full force and effect; provided, however, that Peregrine may coordinate with the Contractor to have the Contractor, rather than Peregrine, procure and maintain the Wrap policy and the Builder's Risk insurance required by Section 23.3.5 so as to avoid duplication of coverages. The wrap policy shall contain tail coverage until the expiration of the statute of repose for construction defects, unless another time period is expressly provided in this Section 23. The premiums and deductibles for all insurance required by this Section 23.1 are to be paid by Peregrine (or by the Contractor or its Subcontractors).

This Section 23.1 shall not limit in any way the extent to which Peregrine may be held responsible for the payment of damages to persons or property resulting from Peregrine's activities, the activities of its invitees, employees, licensees, agents, or independent contractors, or the activities of any other person or persons for whom Peregrine otherwise is legally responsible. If Peregrine obtains insurance policies in addition to the policies referred to in this Section 23, such policies shall provide that such additional policies or coverages will not diminish the coverage required by this Section 23. Peregrine shall provide the City with a copy of such additional policy or coverage confirming the above.

**23.1.1 Delayed Opening Insurance** -- Peregrine will not be required to obtain Delayed Opening Insurance.

**23.1.2 Commercial General Liability** -- Peregrine shall cause Contractor to maintain Commercial General Liability insurance ("CGL") as part of the Wrap, on an Insurance Services Office ("ISO") form, insuring Peregrine as a named insured, until Substantial Completion of the Project and completion of all punch list items, with minimum limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the general

1 aggregate. The Commercial General Liability insurance shall contain no exclusions other  
2 than those noted on the standard ISO form and those that are not objectionable to the  
3 City in its sole discretion, shall specifically include Contingent Liability/Independent  
4 Contractor coverage, and shall contain the following specific limits of liability and be  
5 subject to the following provisions:

6 **23.1.2.1** Personal and Advertising Injury liability limits of not less than  
7 \$2,000,000 per occurrence.

8 **23.1.2.2** Products and Completed Operations liability limits of not less than  
9 \$4,000,000 in the aggregate.

10 **23.1.2.3** The Commercial General Liability Policy shall be endorsed to list "the  
11 City and its bureaus, officers, agents, and employees" as additional insureds with  
12 respect to liability and defense of suits arising out of the activities performed by, or  
13 on behalf of, Peregrine, including not only ongoing operations but also completed  
14 operations on the ISO form 2010 or CG 2037 form (2004 edition or equivalent).

15 **23.1.2.4** The Commercial General Liability policy shall also have a per project  
16 aggregate endorsement.

17 **23.1.3** *Umbrella Insurance* -- Peregrine shall cause Contractor to maintain  
18 an Umbrella Policy as part of the Wrap policy with liability limits of \$200,000,000 that shall  
19 be excess over the CGL and Employers' Liability.

20 **23.1.4** *Automobile Liability* -- Peregrine shall carry Auto Liability Coverage  
21 in an amount not less than \$2,000,000 per accident to protect against liability arising out  
22 of the use of any automobile (whether owned or not) including bodily injury and property  
23 damage.

24 **23.1.5** *Workers' Compensation* -- Peregrine shall secure and maintain  
25 workers' compensation insurance complying with the statutory limits of the State of  
26 Oregon to insure all persons or entities employed by Peregrine and shall provide  
27 employer's liability coverage, including broad form all states protection, if applicable,  
28 voluntary compensation, and Federal endorsement. The employer's liability coverage shall  
29 have the following limits: (a) Bodily Injury by Accident: \$1,000,000 each accident; (b)  
30 Bodily Injury by Disease \$1,000,000 each employee; and (c) Bodily Injury by Disease:  
31 \$1,000,000 policy limit. The costs of such insurance shall be paid by Peregrine.

## 32 **23.2 Professional Liability Insurance to be Carried by Design Professionals**

33 Peregrine shall cause its Architect and any Retained Parties that are design professionals to  
34 maintain professional liability insurance, on a primary basis, covering wrongful acts, errors and/or  
35 omissions (including design errors, if applicable) for damage arising from professional services in an  
36 amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate. Peregrine shall require and  
37 cause the Architect and any Retained Parties that are design professionals to maintain the Professional  
38 Liability policy until the expiration of the statute of repose for design and construction defects with an  
39 effective date that is retroactive to the date of the initial policy.

**23.3 Insurance to be Carried by the Contractor**

**23.3.1 General** -- The Contractor shall maintain all the insurance required of Retained Parties under Section 23.4 below, as such requirements may be increased or supplemented by this Section 23.3. Peregrine shall cause the Contractor to name all Subcontractors as insureds under its Wrap policies or, in the alternative, to cause each Subcontractor to maintain separate insurance as determined by the Contractor, provided that each Subcontractor's limits of Commercial General Liability shall not be less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

**23.3.2 TRIA** -- The Contractor's coverage shall include Terrorism Risk Insurance Act (TRIA) coverage.

**23.3.3 Umbrella Policy** -- Contractor shall maintain the Umbrella Policy required by Section 23.1.3, which policy shall be over and above the general liability and employer's liability policies. This coverage must be kept in effect until the expiration of the statute of repose for design and construction defects.

**23.3.4 Pollution Liability** -- Contractor shall maintain Contractor's Pollution Liability coverage with limits of \$50,000,000 per occurrence and in the aggregate during the construction of the Project.

**23.3.5 Builder's Risk** -- During construction of the Project Improvements, in addition to (but not in duplication of) the other insurance coverages required under this Section 23, Contractor shall maintain a policy of Builder's Risk insurance acceptable to the City and Peregrine, written on a replacement cost basis including any subsequent modifications, in an amount not less than the projected total cost of construction of the Project Improvements as estimated by Peregrine and approved by the City not more than fifteen (15) days prior to the Insurance Start Date and as thereafter revised from time to time by Peregrine and approved by the City during the course of such construction.

**23.3.5.1** Such coverage shall be maintained until final payment has been made or until no person or entity other than the City or Peregrine has an insurable interest in the property to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of the City, the Retained Party, Subcontractors, and sub-tier contractors in the project.

**23.3.5.2** All Risk Cause of Loss Form - Builder's Risk Coverage shall be on an all risk cause of loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood, earthquake, and collapse coverage, and all below and above ground structures, water and sewer mains.

**23.3.5.3** The Builder's Risk policy shall also include the following amendments and provisions:



(a) Waiver of Subrogation – The City shall not be required to require its property insurer to waive subrogation against Peregrine or any of its Retained Parties;

(b) Equipment Breakdown Coverage - Equipment breakdown coverage (aka boiler & machinery coverage) shall be provided that specifically covers insured equipment during installation and testing;

(c) Design Error - The Builder's Risk policy shall not exclude coverage of resultant damages caused by design error;

(d) Deductible - Any deductible shall not exceed \$100,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$10,000, whichever is more.

**23.3.5.4 Insured Loss** - A loss insured under the Builder's Risk shall be adjusted in conjunction with the City and any payments or settlements for the City's loss shall be made payable to the City. The Contractor shall pay Subcontractors their just share of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to their subcontractors in similar manner. The City shall have power to adjust and settle the City's loss with insurers. It is expressly agreed that nothing in this section shall be subjected to arbitration and any references to arbitration are expressly deleted.

#### **23.4 Insurance Required to be Carried by Retained Parties (Including the Contractor)**

All Retained Party Contracts shall contain clauses requiring the Retained Party to maintain in force each of the insurance coverages in this Section 23.4 during the term of the Retained Party Contract and for such additional time as indicated below:

##### **23.4.1 General Provisions:**

**23.4.1.1** The Retained Party shall maintain at least the minimum insurance coverage described in this Section 23.4 and maintain that coverage until Final Completion of the Project. By requiring such minimum insurance, the City does not guarantee that the insurance is sufficient to cover all the risks the Retained Party may face. Instead, the Retained Party should assess its own risks and, if it deems it appropriate and prudent, maintain higher limits, broader coverages, or both, than the coverage required by the City. The Retained Party is not relieved of any liabilities if it fails to obtain and maintain the minimum insurance required. The insurance carried by the Retained Party shall be the primary coverage and non-contributory, and any insurance maintained by the City is excess and solely for damages or losses for which the City is responsible.

**23.4.1.2** All deductibles and premiums are the responsibility of the Contractor or a Retained Party.

1           **23.4.1.3** The Retained Party Contract amount must include the cost of any  
2 insurance required by this Section 23.4. The Retained Party is not entitled to  
3 additional compensation because it misunderstood what insurance coverage was  
4 required. Any confusion regarding what coverage is required should be brought to  
5 the City's attention prior to execution of a Retained Party Contract.

6           **23.4.1.4** The City may, but is not required to, obtain insurance it deems prudent  
7 under the circumstances if it discovers that the insurance required by the Retained  
8 Party Contract has not been obtained or, for whatever reason, is no longer in  
9 effect. If so, the City may recover the cost of obtaining that insurance from  
10 Peregrine and may offset such costs against any sums due, or that become due, to  
11 Peregrine under this Agreement or any other agreement.

12                   **23.4.2 Workers' Compensation:**

13           **23.4.2.1** The Retained Party shall secure and maintain, and require all  
14 Subcontractors to secure and maintain, workers' compensation insurance  
15 complying with the statutory limits of the State of Oregon in accordance with ORS  
16 Chapter 656, either as: (a) a carrier-insured employer; or (b) self-insured employer.

17           **23.4.2.2** Such worker's compensation insurance shall insure all persons or  
18 entities employed in performing services under the Retained Party Contract and  
19 shall provide employer's liability coverage, including broad form all states  
20 protection, if applicable, voluntary compensation, and Federal endorsement. The  
21 employer's liability coverage shall have the following limits: (a) Bodily Injury by  
22 Accident: \$1,000,000 each accident; (b) Bodily Injury by Disease \$1,000,000 each  
23 employee; and (c) Bodily Injury by Disease: \$1,000,000 policy limit.

24           **23.4.2.3** The Retained Party shall require proof of such Workers' Compensation  
25 Insurance by receiving and keeping on file a certificate of insurance from each  
26 Subcontractor or anyone else directly employed by either the Retained Party or its  
27 Subcontractors.

28                   **23.4.3 Commercial General Liability (CGL)**

29           **23.4.3.1** The Retained Party shall be an insured on the Wrap or obtain, at  
30 Retained Party's expense, and keep in effect during the term of the Retained Party  
31 Contract and for such longer period as specified below, CGL Insurance on a  
32 standard ISO occurrence form, with minimum limits of not less than \$2,000,000 per  
33 occurrence and \$2,000,000 in the general aggregate. The Commercial General  
34 Liability insurance shall contain no exclusions other than those noted on the  
35 standard ISO form and those that are not objectionable to the City in its sole  
36 discretion, shall specifically include Contingent Liability/Independent Contractor  
37 coverage, and shall contain the following specific limits of liability and be subject to  
38 the following provisions:

39           **23.4.3.2** Personal and Advertising Injury liability limits of not less than  
40 \$2,000,000 per occurrence.

1                   **23.4.3.3** Products and Completed Operations liability limits of not less than  
2                   \$2,000,000 in the aggregate.

3                   **23.4.3.4** The CGL coverage required by this Agreement must be kept in effect  
4                   until the expiration of the statute of repose for design and construction defects.

5                   **23.4.4 Automobile Liability**

6                   The Retained Party shall obtain, at Retained Party's expense, and keep in effect during the term of the  
7                   Retained Party Contract, Automobile Liability Insurance covering owned, non-owned and hired vehicles.  
8                   This coverage may be combined with the Commercial General Liability Insurance policy. The combined  
9                   single limit per occurrence shall not be less than \$2,000,000. Endorsements CA9948 and MCS-90 are  
10                  required if the Retained Party is transporting any type of hazardous materials. This policy must be kept  
11                  in effect for two (2) years after completion of the project.

12                  **23.5 Insurance Requirements Applicable to Peregrine and All Retained Party Contracts**

13                         **23.5.1** The premiums and deductibles for all insurance required by this  
14                         Section 23 are to be paid by Peregrine or its Retained Parties, as applicable.

15                         **23.5.2** All required insurance (excepting workers' compensation and the  
16                         umbrella policy required by Section 23.1.3) shall be primary coverage and non-  
17                         contributory with regard to insurance maintained by the City and shall be for the benefit  
18                         of the City and except for workers' compensation, Builder's Risk, pollution and  
19                         professional liability, shall list "the City and its bureaus, officers, agents, and employees"  
20                         as additional insureds with respect to liability and defense of suits arising out of the  
21                         activities performed by, or on behalf of, Peregrine, including not only ongoing operations  
22                         but also completed operations on the ISO form 2010 or CG 2037 form (2004 edition or  
23                         equivalent).

24                         **23.5.2.1** The "additional insured" requirement shall also apply to  
25                         Products/Completion Operations coverage. If for any reason Retained Party cannot  
26                         obtain such coverage from its insurer, it shall obtain at Retained Party's expense, and  
27                         keep in effect during the term of the Retained Party Contract, Owners and Contractors  
28                         Protective Liability Insurance, including Products/Completed Operations coverage for up  
29                         to 24 months after Final Completion, naming the City of Portland, its officers, employees  
30                         and agents as Named Insured with not less than a \$2,000,000 limit per occurrence,  
31                         \$2,000,000 Products/Completed Operations Aggregate and \$2,000,000 general  
32                         aggregate. This policy must be keep in effect for 24 months following Final Completion.

33                         **23.5.3** All required insurance shall be obtained from a financially sound  
34                         insurance company, rated not less than A- in Best's Rating Guide, authorized to do  
35                         business in the State of Oregon.

36                         **23.5.4** The Builder's Risk policy shall provide that the waiver of recovery  
37                         (subrogation) provided in Section 23.6 shall not invalidate or have any adverse effect on  
38                         the liability of the insurer.



1                   **23.5.5** All required insurance shall provide that such policies or  
2 certificates shall not be canceled without prior written notice to the City's Spectator  
3 Venues Program Manager. Insurance certificates shall contain a provision that states  
4 substantially the following: "The insurance described in this certificate shall not be  
5 canceled or materially altered without giving the City's Spectator Venues Program  
6 Manager sixty (60) days written notice in advance of that action, except for cancellation  
7 due to non-payment of premiums, in which case at least ten (10) Business Days prior  
8 written notice must be given to the City's Spectator Venues Program Manager." In  
9 addition, there shall be no cancellation, non-renewal, material change, or potential  
10 exhaustion of aggregate limits without thirty (30) days written notice from the Retained  
11 Party, Peregrine, or the insurer(s) to the City's Spectator Venues Program Manager. To the  
12 extent certificates of insurance contain words to the effect that Peregrine or the Retained  
13 Party shall "endeavor to send notice of cancellation" or similar language, Peregrine or the  
14 Retained Party shall require its insurer(s) to send such notice by making sure that the  
15 words "endeavor to" or similar words are removed from the certificate.

16                   **23.5.6** Peregrine and all Retained Parties shall provide the City's  
17 Spectator Venues Program Manager with certificates of insurance and additional insured  
18 endorsements signed by the companies issuing such policies evidencing all coverage  
19 required by this Agreement using ISO form numbers to identify the specific coverage that  
20 has been obtained and the effective dates of the insurance policies. The certificate(s) will  
21 identify all of the parties who are Additional Insureds or Loss Payees and will reflect the  
22 other requirements of this Section 23. For Retained Parties, such documentation shall be  
23 provided to the City Spectator Venues Program Manager before performance by a  
24 Retained Party of any Work on the Project. Failure to comply with the reporting provisions  
25 of the Retained Party Contract shall not affect the coverages provided to the City of  
26 Portland and its officers, employees and agents. For Peregrine, such documentation shall  
27 be provided to the City Spectator Venues Program Manager prior to the commencement  
28 of construction of the Project. Thereafter, Peregrine and all Retained Parties shall provide  
29 the City with an opportunity to review such policies (including the declarations page,  
30 standard text, and all amendments and endorsements) at a location in Portland, Oregon  
31 at any time during normal business hours provided the City has given Peregrine or the  
32 Retained Party notice of its desire to review such policies at least two (2) Business Days in  
33 advance. At least thirty (30) days prior to the expiration of any such policy, Peregrine or  
34 the Retained Party shall provide a copy of the renewal certificate to the City, and promptly  
35 thereafter provide the City with copies of such renewal policies.

36                   **23.5.7** The City's Spectator Venues Program Manager will review the  
37 certificates for approval. The City's Spectator Venues Program Manager may reject any  
38 proposed certificate if the insurance proposed to be provided is not the same as the  
39 coverage required by this Agreement, may reject the certificate if it is unclear, or require  
40 that the underlying policy be presented for review. If the City's Spectator Venues Program  
41 Manager determines that the certificates are unclear, the Retained Party shall provide  
42 revised certificates that clearly show the insurance required by this Agreement has been  
43 obtained. Review or approval of the City's Spectator Venues Program Manager of any  
44 insurance certificate does not excuse Peregrine or the Retained Party from providing the  
45 insurance required by this Agreement.



1                   **23.5.8** Any deductible in excess of \$100,000 shall be disclosed to the City  
2 in writing prior to beginning performance of any Work by the Retained Party, and is  
3 subject to the City's Spectator Venues Program Manager approval.

4                   **23.5.9 Negligence of City** - Nothing in this Section 23 requires Peregrine  
5 or a Retained Party or its insurer to provide insurance to the City for claims arising out of  
6 the death or bodily injury to persons or damage to property caused, in whole or in part, by  
7 the negligence of the City.

8                   **23.5.10 Claims of Damage** – Peregrine and each Retained Party shall  
9 defend, indemnify, and hold the City harmless from any and all claims of damage,  
10 including attorney fees and costs, resulting from Peregrine's or the Retained Party's  
11 activities in regard to notification of utilities and emergency service providers.

12                   **23.5.11** All insurance coverage obtained by the Retained Party and  
13 Peregrine:

14                   **23.5.11.1** Shall not be affected by any insurance coverage otherwise existing;

15                   **23.5.11.2** Shall protect each insured in the same manner as though a separate  
16 policy had been issued to each, notwithstanding the naming of any number of  
17 additional insureds. However, this requirement is not intended to increase the  
18 insurer's liability as set forth in the policy beyond the amount, or amounts, for  
19 which the insurer would have been liable if only one person or entity had been  
20 named as the insured;

21                   **23.5.11.3** Shall permit partial or beneficial occupancy or use of the Project by  
22 Peregrine in advance of Substantial Completion without cancellation or  
23 discontinuance of coverage. In that event, Peregrine and the Retained Party shall  
24 agree upon the time when partial occupancy or use of the Project by Peregrine  
25 shall occur. If the insurance coverage provided by the Retained Party requires  
26 consent of the Insurer before such occupancy or use occurs, the insurance policy  
27 shall also state that such consent shall not be unreasonably withheld. The City,  
28 Peregrine, and Retained Party shall take reasonable steps to obtain consent of the  
29 insurance company or companies and agree to take no action, other than upon  
30 mutual written consent, with respect to occupancy or use of the work that could  
31 lead to cancellation, lapse, or reduction of insurance; and

**23.6 Waiver of Recovery**

Neither Peregrine nor the City nor the Contractor shall be liable to any other Party or the Contractor or to any insurance company (by way of subrogation or otherwise) insuring any other Party or the Contractor for any loss or damage to property or injury to persons, even though such loss or damage might have been occasioned by the negligence of such Party or the Contractor, its agents or employees, if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

**23.7 Failure to Maintain Insurance**

If Peregrine fails or refuses to procure or maintain the insurance required by this Section 23, after five (5) days prior notice to Peregrine, the City shall have the right, at its election, to procure and maintain such insurance, in which event, any reasonable premium paid by the City, plus interest at the rate of Default Interest computed from the date such premium is paid by the City, shall be due and payable by Peregrine to the City on the first day of the month following the date on which such premium was paid. The City shall give prompt notice to Peregrine of the payment of any premium stating the amount paid.

**23.8 Proceeds Disposition**

**23.8.1** Unless otherwise agreed by Peregrine and City in writing, insurance proceeds with respect to loss or damage to the Project Improvements, under the provisions of a policy of insurance, shall be used for the repair and restoration of the Project Improvements in accordance with the 100% Construction Documents approved by the City, pursuant to Section 24. To the extent that such proceeds exceed the costs of such repair or restoration, such excess shall be distributed as provided in Section 24.3. If the insurance proceeds are less than the costs of such repair and restoration, the provisions of Section 24 shall control.

**23.8.2** Insurance proceeds from the CGL policy referred to in Section 23.1.2 shall be used to indemnify the Parties from third party claims.

**23.9 Changes in Insurance Requirements**

Any modification or variation from the insurance requirements in this Agreement shall be made by the City Risk Management Office or by the CAO, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action. Until Final Completion of the Project, the City shall have the right to annually review the insured limits under this Section 23 and make changes deemed appropriate by the City in its reasonable discretion.