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**EXPANSION REDEVELOPMENT AGREEMENT**

**between**

**CITY OF PORTLAND, OREGON,  
a municipal corporation of the State of Oregon**

**and**

**PEREGRINE SPORTS, LLC,  
a Delaware limited liability company**

**Effective Date: \_\_\_\_\_, 2017**

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**EXPANSION REDEVELOPMENT AGREEMENT  
(Elevated Eastside Seating)**

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2

3 PARTIES: CITY OF PORTLAND, OREGON, (the "City")  
4 a municipal corporation of the State of Oregon

5 PEREGRINE SPORTS LLC, ("Peregrine")  
6 a Delaware limited liability company

7

8 "Effective Date": \_\_\_\_\_, 2017

9 **RECITALS**

- 10 A. The City owns Providence Park (the "Stadium"), located at SW 18th Avenue and SW Morrison Street  
11 and legally described on Exhibit 1 to the Operating Agreement (defined in Recital B below). For  
12 purposes of this Expansion Redevelopment Agreement (this "Agreement") the Stadium includes the  
13 Phase One Expansion Improvements and the Phase Two Expansion Improvements. Peregrine  
14 operates the Stadium on a long-term basis, on behalf of the City, as a modern outdoor venue used as  
15 the home field for the Portland Timbers, a Major League Soccer ("MLS") franchise (the "Timbers"),  
16 and the Portland Thorns, a National Women's Soccer League ("NWSL") franchise (the "Thorns").
- 17 B. Related to the Stadium, the City and Peregrine are parties to (i) the Redevelopment Agreement dated  
18 March 10, 2010 (the "RDA"); (ii) the Stadium Operating Agreement dated March 10, 2010, as  
19 amended by a First Amendment to Stadium Operating Agreement dated March 6, 2014 (collectively,  
20 the "Operating Agreement"); and (iii) various Related Agreements, as defined in the RDA.
- 21 C. The City and Peregrine desire an expansion of the Stadium to add capacity for 3,000 - 4,000 additional  
22 attendees (the "Expansion"), as further detailed in the non-binding term sheet authorized by City  
23 Council on June 21, 2017, in Resolution No. 37299 (the "Resolution"). The Expansion has an estimated  
24 preliminary budget of \$50,000,000, which is subject to change due to further design work. Subject to  
25 securing the necessary City approvals, including approvals from the City in its regulatory capacity,  
26 Peregrine intends to construct the Expansion primarily between the 2017 and 2018 MLS seasons and  
27 the 2018 and 2019 MLS seasons or between two or three other MLS seasons; provided, however,  
28 construction may occur on non-event days during these seasons.
- 29 D. As provided in the July 3, 2017, letter from the City's Chief Administrative Officer to Peregrine (the  
30 "CAO Letter"), the Expansion is an "Enhancement" as defined in Exhibit 1.1, Section 55, of the  
31 Operating Agreement, and as such the Parties have been proceeding subject to the provisions of the  
32 Operating Agreement related to Enhancements, including, but not limited to, Section 8 and the  
33 approval standard in Section 1.2, as modified by Addenda 1-3 to the CAO Letter (the "Addenda" and  
34 each an "Addendum"). The Addenda were executed by both the City and Peregrine concurrently with  
35 the Termsheet Amendment, defined below. The Parties now intend, upon execution of this  
36 Agreement, to terminate the CAO Letter and related Addenda and for this Agreement to provide the  
37 "equivalent degree of prior approval, control and supervision" required by Operating Agreement  
38 Section 8.4 and for this Agreement to supersede the CAO Letter and Addenda thereto.

- 1 E. The non-binding term sheet authorized by the Resolution was amended by City Council on September  
2 27, 2017, in Resolution No. 37319 (the "Termsheet Amendment") to allow Peregrine, subject to the  
3 Addenda and other obligations in the Termsheet Amendment, to commence construction activities  
4 prior to the execution of this Agreement (as defined in the Termsheet Amendment, the "Initial  
5 Work").
- 6 F. Construction of the Expansion is anticipated to be done in two phases (the Phase One Work and the  
7 Phase Two Work) and each Construction Phase will have a GMP and an estimated budget. The "Phase  
8 One Expansion Improvements" or "Phase One Work" means all work to be completed under the  
9 Contractor's Phase One GMP, which work is anticipated to cover the in-ground work for foundations  
10 at or below the existing concourse level, work located in the public right-of-way, and construction of  
11 columns from the concourse to the first elevated deck. The "Phase Two Expansion Improvements" or  
12 "Phase Two Work" means all work other than the Phase One Work to be completed under the  
13 Contractor's GMP, which work includes work from the concourse level to the second and third levels  
14 of elevated deck consisting mainly of columns and slabs, work to the existing concourse level  
15 structures, and other above ground work anticipated to occur during the 2018 season, the off-season  
16 between the 2018 and 2019 seasons, and the early portion of the 2019 season. The Phase Two Work  
17 includes removal of the existing canopy, new seating levels, new roof structure and canopy, and  
18 completion of all interior spaces.
- 19 G. Peregrine, at its cost and expense, will design and construct the Expansion in accordance with all  
20 applicable Laws, rules, and regulations, including compliance with any and all ADA requirements  
21 triggered by the Expansion. Peregrine entered into a design contract for the Expansion with Allied  
22 Works Architecture, an Oregon corporation (the "Architect") effective February 1, 2017.
- 23 H. After the Expansion is complete, Peregrine will continue to operate the Stadium in accordance with  
24 the Operating Agreement, as the same may be amended, and in compliance with all applicable Laws,  
25 rules, and regulations. The City will continue to own the Stadium.
- 26 I. On June 8, 2017, the City Council adopted an exemption to the competitive bidding process for the  
27 renovation of the Stadium pursuant to Ordinance No. 188441. Peregrine was selected as the sole  
28 source developer for such renovations based on and in accordance with findings attached to that  
29 Ordinance.
- 30 J. The City and Peregrine desire to set forth the terms and conditions for the Expansion, as provided in  
31 this Agreement.

## 32 AGREEMENT

33 NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated into this  
34 Agreement, and in consideration of the mutual promises of the Parties set forth in this Agreement, the  
35 Parties agree as follows:

1    **SECTION 1**     DEFINITIONS AND OTHER CONVENTIONS

2                   **1.1 Defined Terms**

3                   Some defined terms are defined in Exhibit 1.1. Other terms are defined in the body of this  
4 Agreement.

5                   **1.2 Standard of Consent or Approval; Authority to Approve**

6                   Wherever this Agreement provides that a Party's consent, approval, or concurrence is required,  
7 or where a document or action must be acceptable to a Party, or words of similar import, the standard  
8 against which the Party exercises its judgment shall be the good faith sole discretion of that Party unless  
9 this Agreement specifies a different standard (e.g., reasonable) and in that circumstance the specified  
10 standard will control. If the same act of consent, approval, acceptance, or concurrence is referred to  
11 multiple times, then the specified standard contained in any such reference to the same act of consent,  
12 approval, acceptance, or concurrence shall pertain to all such references. If a Party has the right to  
13 approve a matter, then that Party also has the right to disapprove that matter.

14                   "Consent," "approval," "acceptance", or "concurrence" of the City required or allowed by this  
15 Agreement may be given by the City's CAO, or his or her designee, unless authority to consent, approve,  
16 accept, or concur is specifically reserved to the City Council. "Consent," "approval," "acceptance", or  
17 "concurrence" of Peregrine required or allowed by this Agreement may be given by a manager of  
18 Peregrine or his or her designee.

19                   **1.3 Action of Peregrine**

20                   When Peregrine is required or allowed to take action under this Agreement, Peregrine may take  
21 action through its Retained Parties by enforcement of a Retained Party Contract unless this Agreement  
22 specifically provides that Peregrine may not delegate the required or allowed action to a Retained Party.

23    **SECTION 2**     IDENTIFICATION OF RELATED AGREEMENTS

24                   At the times required by this Section 2, the relevant parties, including third parties, shall have  
25 completed and entered into the agreements or modifications of existing agreements listed in this Section  
26 2, which comprise the Related Agreements. Peregrine shall pay any and all costs associated with the  
27 update of the Good Neighbor Agreement, CTMP, Construction Mitigation Plan, and Construction  
28 Community Outreach Plan, including hiring a facilitator for the required public involvement and obtaining  
29 City Council review and approval of such updates. In addition, Peregrine has convened the Oversight  
30 Committee in accordance with the Good Neighbor Agreement. The City will arrange for City Council  
31 consideration of the Good Neighbor Agreement and CTMP.

32                   **2.1 Operating Agreement Amendment**

33                   In conjunction with approval of this Agreement, an amendment of the Operating Agreement to  
34 provide for the Expansion and related changes.



1           **2.2 Good Neighbor Agreement**

2           Prior to Substantial Completion, a modification, among Peregrine, the City, the Goose Hollow  
3 Foothills League, and the Northwest District Association of the Good Neighbor Agreement, dated February  
4 17, 2010 (the "Good Neighbor Agreement"), which modification shall be reasonably acceptable to the  
5 City.

6           **2.3 Exclusive Use and Guaranty Agreement**

7           A modification of the Exclusive Use and Guaranty Agreement attached to the RDA as Exhibit 2.3.

8           **2.4 Memorandum of Agreement**

9           A short-form agreement between the City and Peregrine to be recorded against the Stadium  
10 property to put third parties on notice of the existence of this Agreement, attached hereto as Exhibit 2.4.

11           **2.5 Expansion Completion and Make Whole Guaranty**

12           The Performance and Completion or Make-Whole Guaranty among the City and the Guarantors  
13 in the form attached hereto as Exhibit 2.5 guaranteeing Peregrine's completion of the Expansion  
14 Improvements or restoration of the Stadium to the condition existing prior to the Effective Date (the  
15 "Expansion Completion Guaranty").

16           **2.6 Construction Mitigation Plan**

17           A plan to mitigate the impact of construction on surrounding areas for each of the Phase One  
18 Work and the Phase Two Work, acceptable to the City (each, a "Construction Mitigation Plan" and  
19 collectively, the "Construction Mitigation Plans"). The Construction Mitigation Plan is required by the  
20 current Good Neighbor Agreement, and was approved by the Oversight Committee, and the City  
21 representative on the Oversight Committee, on August 30, 2017.

22           **2.7 Community Outreach Plan**

23           A Community Outreach Plan for the Expansion acceptable to the City. The Community Outreach  
24 Plan is required by the Good Neighbor Agreement, and was approved by the Oversight Committee, and  
25 the City representative on the Oversight Committee, on August 30, 2017.

26           **2.8 Revised Comprehensive Transportation Management Plan**

27           Prior to Substantial Completion, an update of the Comprehensive Transportation Management  
28 Plan (the "CTMP") dated January 2, 2010, which update shall be reasonably acceptable to the City.

29           **2.9 Architectural Services Agreement**

30           Prior to the commencement of the Initial Work, the Agreement for Architectural and Engineering  
31 Services for Providence Park Stadium Expansion between Peregrine and the Architect for the performance  
32 of the Architectural Work effective February 1, 2017(the "Architectural Services Agreement"). The City  
33 approved the Architectural Services Agreement on November 9, 2017.



1           **2.10 General Construction Contract**

2           Prior to the commencement of the Initial Work, the Agreement Between Owner and Contractor  
3 between Peregrine, as owner, and Contractor, as general contractor, and the General Conditions for the  
4 Contract for Construction, for the construction of the Expansion Improvements (collectively, the "General  
5 Construction Contract"). The City approved the General Construction Contract on November 9, 2017 .

6           **SECTION 3       MASTER DEVELOPER; RETAINED PARTIES**

7           **3.1 Master Developer**

8           On and subject to the terms and conditions of this Agreement, the City hereby grants to Peregrine  
9 the sole and exclusive right to develop and to contract for the construction of the Expansion  
10 Improvements. Except as expressly provided otherwise in this Agreement, Peregrine shall take all actions,  
11 retain all persons and firms, and employ all means to design, install, and construct, or cause to be  
12 designed, installed, and constructed, the Expansion Improvements in the manner and within the times  
13 contemplated by this Agreement, consistent with the Public Objectives. In so doing, Peregrine shall act in  
14 its own name as an independent contractor and not on behalf of or as an agent, joint venturer, or partner  
15 of the City or any other public entity except under such circumstances as the City or other public entity  
16 shall expressly designate in writing that Peregrine is its agent (for example, such as may be necessary to  
17 effect utility abandonments and relocations, if any).

18           **3.2 Approval of Retained Parties**

19           **3.2.1** All consultants and contractors, including but not limited to the architects,  
20 engineers, other design professionals, the general contractor, project managers, construction managers,  
21 subconsultants with proposed subcontracts in excess of \$100,000, subcontractors to the General  
22 Contractor with a proposed subcontract in excess of \$100,000, and construction inspectors, retained or  
23 proposed to be retained by Peregrine or by the companies Peregrine retains for the Expansion (each a  
24 "Retained Party") shall be approved or disapproved in writing by the City according to this Section 3.2.  
25 Whether or not subject to City approval under this Section 3.2, all subcontractor contracts and  
26 subconsultant contracts will comply with all applicable Laws.

27           **3.2.1.1** In the Resolution, the City approved the Architect as the architect for the  
28 Expansion and as a Retained Party and Turner as the general contractor for the Expansion and as a  
29 Retained Party.

30           **3.2.1.2** Before the execution of this Agreement, City staff reviewed and gave  
31 conditional approval of Retained Parties and Retained Party Contracts. Those "conditionally approved"  
32 Retained Parties and Retained Party Contracts are noted as such in Exhibit 3.2.1. The City hereby approves  
33 the Retained Parties listed on Exhibit 3.2.1 as "conditionally approved" for the work referred to in the  
34 identified contracts with such conditionally approved Retained Parties, acknowledges that the provisions  
35 of Section 3.2.2 through 3.2.4 have been deemed fulfilled for such Retained Party Contracts (except as  
36 relating to contract amendments after the Effective Date), and ratifies the actions of City staff with respect  
37 to such conditionally approved Retained Parties. If Exhibit 3.2.1 identifies only a Retained Party but does  
38 not identify its contract, then the contract with such Retained Party is not an approved Retained Party  
39 Contract and shall remain subject to all of the following provisions of this Section.

1           **3.2.2** To obtain City approval of a Retained Party, a Retained Party Contract, or both,  
2 as applicable, Peregrine shall submit to the City: (a) a written statement of the qualifications of each  
3 proposed Retained Party (other than the Architect, Turner, and the other Retained Parties listed on Exhibit  
4 3.2.1) including the Retained Party's financial capacity, expertise, reputation, insurance coverage and  
5 history of (i) completion of projects on time and on budget and (ii) non-compliance with the City's policies  
6 and regulations related to construction of City projects, if any; (b) a statement of the nature of the work  
7 to be performed by the proposed Retained Party; and (c) a copy of the proposed contract with the  
8 Retained Party.

9           **3.2.2.1** In lieu of submitting a single, selected Retained Party for City approval,  
10 Peregrine or its Retained Parties may provide for City approval a candidate list (including all information  
11 required under this Section 3.2.2) of firms that may be retained for a specific sub-contract, and any firm  
12 on the City approved candidate list that is retained by Peregrine or its Retained Parties for the specified  
13 sub-contract shall be an approved Retained Party under this Section 3.2 without any further review or  
14 approval.

15           **3.2.2.2** The City shall have five (5) Business Days after receipt of a complete  
16 submittal to approve or disapprove of the proposed Retained Party based on the standards of subsections  
17 (a)-(c) of this Section 3.2.2 and to approve or disapprove of a Retained Party Contract based on the  
18 standards of subsections (i)-(vi) of Section 3.2.2.3 below. The City shall have ten (10) Business Days after  
19 receipt of a complete submittal to approve or disapprove of a proposed Retained Party Contract. Any  
20 disapproval by the City shall be in writing and shall include a statement of reasons for the disapproval.  
21 The City shall approve or disapprove of each Retained Party and each Retained Party Contract and any  
22 amendment to that contract except Change Orders with respect to the Expansion Improvements which  
23 shall be governed by Section 9.4, so long as such Change Orders are limited to changes in the contract  
24 work, price, and schedule and do not otherwise amend the relevant Retained Party Contract.

25           **3.2.2.3** In considering proposed Retained Party Contracts, the City will consider:  
26 (i) the reasonableness of the proposed charges and contract terms; (ii) whether the contract, and the work  
27 product of the contract, may be assigned to the City; (iii) the extent to which the contract allows the City  
28 to audit the books and records of the Retained Party; (iv) whether the Retained Party agrees to comply  
29 with the City's policies and regulations related to construction of City projects, if applicable; (v) whether  
30 the contract names the City as an insured or additional insured, as appropriate; and (vi) whether the  
31 contract allows the City to participate in claims that in any way involve the City.

32           **3.2.2.4** Peregrine agrees to provide the City with all Retained Party Contracts  
33 within three (3) Business Days of reaching substantial agreement with the Retained Party as to the terms  
34 of its Retained Party Contract.

35           **3.2.3** If the City fails to approve or disapprove of a proposed Retained Party, a Retained  
36 Party Contract, or both, within the five (5) or ten (10) Business Day period, as applicable, the proposed  
37 Retained Party or Retained Party Contract shall be deemed disapproved. If there is a deemed disapproval  
38 pursuant to the preceding sentence, upon written demand by Peregrine (which demand shall clearly state  
39 in capital letters that it is given pursuant to this Section 3.2.3 and that failure of the City to respond within  
40 five (5) Business Days after receipt shall be deemed approval of the proposed Retained Party or Retained  
41 Party Contract, as applicable), the City shall either approve or disapprove of the proposed Retained Party,  
42 the proposed Retained Party Contract, or both, within five (5) Business Days after receipt of such demand.  
43 Any disapproval shall be accompanied by a written statement of the reasons for disapproval. If the City



1 fails to approve or disapprove the proposed Retained Party within five (5) Business Days after receipt of  
2 Peregrine's written demand following a deemed disapproval, the proposed Retained Party, the proposed  
3 Retained Party Contract or both, as applicable, shall be deemed approved.

4                   **3.2.3.1** If the City provides written notice to Peregrine of its disapproval of a  
5 Retained Party or a Retained Party Contract or both, then within five (5) Business Days of receipt of such  
6 disapproval notice, Peregrine may submit a modified submittal to the City for reconsideration. Following  
7 such resubmittal, the Parties shall work cooperatively and in good faith to resolve disagreements  
8 regarding a Retained Party or a Retained Party Contract. If the City and Peregrine have not reached  
9 agreement on a Retained Party or a Retained Party Contract or both within ten (10) Business Days of such  
10 re-submission, then the Retained Party and Retained Party Contract shall be deemed disapproved, and  
11 Peregrine shall not again propose the Retained Party or the Retained Party Contract.

12                   **3.2.4** In order to facilitate the City's approval of subcontracts under the General  
13 Construction Contract, Peregrine shall cause the Contractor to provide the City with the standard form  
14 subcontract it proposes to use, and the City will have ten (10) Business Days to review that standard form.  
15 Thereafter, Peregrine will submit subcontracts in redlined form to show changes made to the approved  
16 standard form. The City will have three (3) Business Days to review each subcontract.

17                   **3.2.5** All Retained Party Contracts will be expressly subject to the provisions set forth  
18 in Exhibit 3.2.5, entitled "Retained Party Contract Requirements," except as provided below. Subsequent  
19 to the Council Meeting, Peregrine shall not execute any Retained Party Contract unless it includes,  
20 expressly or by reference, the Retained Party Contract Requirements. Prior to the Council Meeting,  
21 Peregrine has not entered into any Retained Party Contracts relating to the Expansion Improvements  
22 other than the Retained Party Contracts listed as conditionally approved in Exhibit 3.2.1. Peregrine may  
23 request the non-inclusion of some or all of the Retained Party Contract Requirements, and the City will  
24 use its reasonable judgment in either approving or disapproving such a request.

25                   **3.2.6** No review, approval, deemed approval, objection, or failure to object by the City  
26 under this Section 3.2 shall be deemed to constitute an approval, determination, or waiver of professional  
27 or contracting licensing requirements of the Retained Party, or the adequacy of the proposed contract  
28 with the Retained Party for the work to be performed, or compliance with any legal requirements  
29 pertaining to the Retained Party, the work, or the Retained Party Contract. No review, approval, deemed  
30 approval, objection, or failure to object by the City under this Section 3.2 shall be deemed to constitute  
31 the approval, determination, or waiver of Peregrine's performance of the terms and conditions of this  
32 Agreement (other than Peregrine's compliance with the provisions of this Section 3.2) or the compromise  
33 of the City's exercise of its regulatory powers. No approval given by the City under this Section 3.2. will be  
34 deemed a representation or warranty by the City of any kind and will not give rise to any City liability for  
35 a Retained Party's deficient performance, defects or errors in the Design Documents, or specific terms in  
36 any Retained Party Contract, provided that Peregrine may rely on the City's approval of a contract as a  
37 representation that the approved Retained Party Contract contains language obligating the Retained Party  
38 to comply with the City's policies and regulations related to construction of City projects, including without  
39 limitation, the Retained Party Contract Requirements.

40                   **3.2.7** If a Retained Party should default under its Retained Party Contract, Peregrine  
41 shall promptly enforce such Retained Party Contract and, if appropriate, promptly replace the Retained  
42 Party subject to the City's approval as provided for in this Section 3.2.

### 3.3 Third Party Beneficiary; Contingent Assignment of Retained Party Contracts

The City is an intended third-party beneficiary of each Retained Party Contract. Peregrine hereby assigns to the City, for security purposes, each Retained Party Contract, provided that the City may only realize upon this security assignment only upon termination of this Agreement by the City. For purposes of ORS 79.0102 et seq., this Agreement constitutes a security agreement. Peregrine acknowledges and agrees that on or after the Effective Date, the City may complete and file UCC Financing Statements so as to perfect the above assignment. This Section 3.3 shall survive the termination of this Agreement.

### 3.4 Public Contracting

**3.4.1** By the determination letter dated August 14, 2017, the Oregon Bureau of Labor and Industries determined that the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the Expansion. However, Peregrine shall bear ultimate responsibility for determining if the Expansion is subject to the Prevailing Wage Rate laws or the Public Contracting Code found at Oregon Revised Statutes chapters 279A, 279B, and 279C, and Peregrine will indemnify and, at the City's request, defend and hold harmless the City, and its successors and assigns, from and against all Claims, costs, expenses, losses, damages, and liabilities whatsoever arising from or in connection with a determination that the Expansion is subject to the Prevailing Wage Rate laws or the Public Contracting Code.

**3.4.2** It is the understanding of Peregrine and the City that the Expansion is not subject to the Workforce Training & Hiring Program detailed in the City's Administrative Rules found at ARB-ADM-1.20, but that the majority of the City's Council members encourage compliance with such program.

**3.4.3** The analysis and conclusions in this Section 3.4 are based on the premise that no public money is being contributed to the Expansion. Therefore, the Parties agree that no part of the Expansion will require the City to contribute public money to the design, project management, construction, or otherwise to the Expansion, including, without limitation, that Peregrine will be solely responsible for funding any Structural Repairs, replacement of Building Systems, ADA requirements, or any other Expansion work which, if not part of the Expansion, may trigger a part of Section 4.5 of the Operating Agreement requiring the City to contribute public money to the Expansion. Notwithstanding the foregoing, following Final Completion of the Expansion, including all Punch List items, the Parties' maintenance and repair, Building Systems, Structural Repairs, and ADA obligations will be as provided in Section 4.5 of the Operating Agreement. This Section 3.4.3 shall survive the termination of this Agreement.

### 3.5 Tanner Creek

**3.5.1** Peregrine and the City acknowledge and agree that Tanner Creek, a storm and sanitary sewer line (the "TC Line"), runs through the Stadium.

**3.5.2** Peregrine shall not commence construction of the foundation for the Expansion Improvements until the Bureau of Environmental Services ("BES") has approved Peregrine's foundation plans and the Bureau of Development Services ("BDS") has approved the structural elements of Peregrine's foundation plans. In addition, neither Peregrine nor Peregrine's agents, employees, contractors, subcontractors, or consultants (collectively, the "Peregrine Related Parties") shall commence any pile work until BDS has approved Peregrine's pile plan and BES has approved Peregrine's plan for protecting the TC Line during pile work.



1           **3.5.3** Peregrine acknowledges that the TC Line cannot sustain heavy loads. Thus,  
2 Peregrine and the Peregrine Related Parties will not drive heavy vehicles or equipment across the TC Line  
3 or within ten (10) horizontal feet of the TC Line, or park such vehicles above the TC Line, without first  
4 obtaining BES review and approval of a plan, including such geotechnical reports as BES may require,  
5 providing for the protection of the TC Line in a manner that is acceptable and determined to be adequate  
6 by BES. During all preparatory work and construction of the foundations and structure, and at any time  
7 when heavy vehicles or equipment are moving across, within ten (10) horizontal feet of, or parked on top  
8 of the TC Line, Peregrine shall video monitor the TC Line not less frequently than weekly and shall provide  
9 BES with copies of such videos. For purposes of this Section 3.5, "heavy vehicles or equipment" shall mean  
10 any vehicle or piece of equipment, including cranes and concrete trucks, with a gross weight, including  
11 load, of 12,000 pounds or more.

12           **3.5.4** No review, approval, deemed approval, objection, or failure to object by the City  
13 under this Section 3.5 shall be deemed an approval or determination by the City of the adequacy of  
14 Peregrine's proposed reports and plans. No approval given by the City under this Section 3.5 will be  
15 deemed a representation or warranty by the City of any kind and will not give rise to any liability of the  
16 City with respect to the TC Line.

17           **3.5.5** If the acts or omissions of Peregrine or the Peregrine Related Parties cause  
18 damage to the TC Line, Peregrine shall be responsible for paying BES' cost to repair the TC Line. If the acts  
19 or omissions of the City or the City Related Parties cause damage to the TC Line, the City shall be  
20 responsible for paying the cost to repair the TC Line. If the acts or omissions of a party other than  
21 Peregrine, the Peregrine Related Parties, the City, or the City Related Parties cause damage to the TC Line,  
22 Peregrine shall have no responsibility for the cost of repairing the TC Line.

23           **3.5.6** Peregrine acknowledges that the TC Line could experience impaired functioning  
24 due to age, capacity limitations, natural casualty or other factors. Except for negligence Claims asserted  
25 by Peregrine against the City, Peregrine hereby waives any and all Claims against the City for consequential  
26 damages arising out of or relating to a failure or surcharge of the TC Line, including, without limitation,  
27 Claims for indirect expenses, loss of use, income, profit, financing, business reputation or loss of services  
28 of persons. Peregrine shall hold harmless, indemnify, and defend the City and the City Indemnitees from  
29 and against all Claims arising out of or resulting from the failure of Peregrine or the Peregrine Related  
30 Parties to strictly comply with this Section 3.5. Any Claims by Peregrine based on the alleged negligent  
31 maintenance of the TC Line by the City shall be asserted in tort and not in contract. The terms and  
32 conditions of this Section 3.5.6 shall survive the termination of this Agreement.

### 33           **3.6 Compliance with Laws**

34           With respect to all actions taken by Peregrine under the terms of this Agreement and any Related  
35 Agreements, Peregrine agrees to conform to and comply with all applicable Laws and to defend,  
36 indemnify, and hold the City harmless from any cost, loss, damage, penalty, charge, or liability based upon,  
37 and to the extent of, Peregrine's claimed or actual non-compliance with applicable Laws, except Claims  
38 made by the City where it is determined that Peregrine is not in violation of applicable laws. This Section  
39 3.6 shall survive the termination of this Agreement.



1    **SECTION 4**     PUBLIC GOALS, OBJECTIVES, AND REQUIREMENTS

2           Peregrine will undertake and complete all actions required by Section 4.1 through 4.8 in support  
 3 of the City's stated public goals (collectively, the "Public Objectives"). Peregrine shall submit to the City,  
 4 within twenty (20) Business Days after written request, written reports from time to time at reasonable  
 5 intervals (based on the nature of the information involved and in such form as may be reasonably required  
 6 by the City), detailing compliance with Sections 4.1, 4.2, 4.3, and 4.7 and achievement of the Public  
 7 Objectives identified by the City in its request, certifying compliance with the CTMP, and the Good  
 8 Neighbor Agreement. Peregrine shall implement any reasonable suggestions of the City as to how to  
 9 better fulfill the Public Objectives, subject to the availability of funds in the Expansion Budget and  
 10 Peregrine's contractual commitments to MLS. Peregrine shall cause all of Peregrine's and the Retained  
 11 Parties' books and records related to fulfillment of the Public Objectives to be made available for City  
 12 review upon reasonable advance notice. Failure of compliance with the requirements of this Section 4 by  
 13 Peregrine or any Retained Party shall constitute a Peregrine Event of Default. The City is obligated to  
 14 comply with the public goals and objectives in Section 4.8 below.

15           **4.1 Compliance with Retained Party Contract Requirements**

16           In all of Peregrine's activities under this Agreement, Peregrine shall comply with and shall cause  
 17 all Retained Parties to comply with the Retained Party Contract Requirements, except for requirements  
 18 that the City has expressly excluded from those Retained Party Contracts pursuant to Section 3.2.5.

19           **4.2 Community Outreach Plan; Construction Mitigation Plan**

20           Pursuant to this Agreement and the Good Neighbor Agreement, Peregrine developed a  
 21 Community Outreach Plan and a Construction Mitigation Plan for the Expansion Improvements, which  
 22 were approved by the Oversight Committee, and the City representative on the Oversight Committee, on  
 23 August 30, 2017.

24           **4.3 Employees**

25           In the course of hiring, Peregrine shall not discriminate based on age, race, gender, or any other  
 26 prohibited standard under the City's equal employment opportunity standards.

27           **4.4 Comprehensive Transportation Management Plan**

28           The City and Peregrine have agreed to update the CTMP. The cost of preparing and implementing  
 29 the updated CTMP shall be at Peregrine's sole cost.

30           **4.5 Good Neighbor Agreement**

31           The City, Peregrine, and the relevant neighborhood associations shall execute the modified Good  
 32 Neighbor Agreement and Peregrine shall perform its obligations thereunder throughout the term of this  
 33 Agreement. The cost of preparing the updated GNA shall be at Peregrine's sole cost.

34           **4.6 Major League Soccer Agreement**

35           Peregrine has provided to the City a letter (the "MLS Letter") from MLS stating that MLS consents  
 36 to the Expansion and does not need to review or approve or both review and approve the design of the

1 Expansion for any purpose, including, without limitation, consistency with MLS guidelines and  
2 requirements.

### 3 **4.7 Sustainability**

4 In accordance with the City's Green Building Policy, Peregrine will ensure that the Stadium,  
5 following Substantial Completion of the Expansion Improvements, obtains LEED Silver Certification from  
6 the United States Green Building Council under the "Existing Buildings: Operations and Maintenance"  
7 rating system.

### 8 **4.8 Labor Matters**

9 Within thirty (30) days of an employee request for an opportunity to meet, Peregrine will provide  
10 a meeting space and allow its employees to meet without management present. Peregrine shall be  
11 obligated to provide such opportunity only once on a date, at a time, and for a length of time reasonably  
12 acceptable to its employees, which date and time shall not interfere with previously scheduled events. In  
13 addition, Peregrine shall comply with all Laws related to the organization of employees.

## 14 **SECTION 5 TITLE TO THE STADIUM**

### 15 **5.1 General**

16 A legal description of the Stadium is attached as Exhibit 6.1 to the RDA. Peregrine will operate the  
17 Stadium pursuant to the Operating Agreement and will continue to have the license rights granted  
18 thereunder. Peregrine will have no real property rights in the Stadium or the Expansion Site, and this  
19 Agreement does not grant any such rights to Peregrine.

### 20 **5.2 Multnomah Athletic Club**

21 Peregrine and the City acknowledge that a portion of the Stadium (i.e., the MAC Parcel) is not  
22 owned by the City and is owned by the MAC. The City's right to use the MAC Parcel is established and  
23 governed by the MAC Easement. The MAC Easement requires that the MAC approve future improvements  
24 to the Stadium under certain conditions at specified stages in the design and permitting processes, all as  
25 further described in the MAC Easement. Peregrine shall timely obtain any and all approvals required from  
26 the MAC and provide evidence to the City that the MAC has approved the specified drawings or that  
27 approval has been deemed to have occurred as described in Section 3.5 of the MAC Easement. Prior to  
28 the Effective Date, Peregrine obtained such approvals from the MAC and provided such evidence to the  
29 City for all approvals required under the MAC Easement, except for approval of the 100% Construction  
30 Drawings for Phase Two.

## 31 **SECTION 6 ENVIRONMENTAL COMPLIANCE**

### 32 **6.1 Environmental Assessment**

33 **6.1.1** Peregrine, using Evren Northwest, conducted the Phase 1 Environmental Site  
34 Assessment of the Stadium dated May 24, 2017, to determine whether the Stadium contained any  
35 Environmental Hazards that required remediation (the "Environmental Assessment"). The Environmental

1 Assessment recommends no further studies or analyses of the environmental condition of the Stadium or  
2 Expansion Site.

3           **6.1.2** The Parties acknowledge that asbestos-containing material ("ACM") is present in  
4 the press box, and in mastic in the metal roof flashings, and at duct penetrations, and lead-based paint is  
5 present in the upper bleachers. ACM and lead-based paint were not assessed as part of the Environmental  
6 Assessment, but the Parties acknowledge that the Environmental Assessment notes that some ACM  
7 remains in the Stadium and that lead-based paint has been identified in previous surveys, but not in the  
8 area in which Expansion Improvements will be constructed. Peregrine shall cause all Retained Parties to  
9 conduct Remediation Work (if necessary in order to comply with applicable Laws) and all work related to  
10 the Expansion Improvements in compliance with Environmental Laws.

11           **6.1.3** If Environmental Hazards are discovered on the Expansion Site during demolition,  
12 excavation, grading, and construction of the Expansion that are not disclosed in the Environmental  
13 Assessment, Peregrine shall prepare and implement a plan for an additional environmental assessment  
14 ("Supplemental Environmental Assessment"). Peregrine shall submit any Supplemental Environmental  
15 Assessment to the City for its review and reasonable approval prior to any applicable submittal to DEQ.  
16 The City shall use its Reasonable Efforts to complete its review and approval of the Supplemental  
17 Environmental Assessment within the following time periods: (a) five (5) Business Days after receipt from  
18 Peregrine, if the Supplemental Environmental Assessment describes an Environmental Hazard that is  
19 considered by industry standards to be commonly encountered or that the Environmental Hazard that is  
20 susceptible of Environmental Remediation by a single or commonly known standard or procedure; or  
21 (b) ten (10) Business Days after receipt from Peregrine, if the Supplemental Environmental Assessment  
22 describes an Environmental Hazard that is considered by industry standards not to be commonly  
23 encountered and/or the Environmental Remediation involves a selection from various alternative  
24 standards or procedures; and (c) if the City, after using Reasonable Efforts, is unable to review and  
25 approve the Supplemental Environmental Assessment within such five (5) or ten (10) Business-Day period,  
26 the City shall have a reasonable period thereafter so long as the City diligently pursues such review and  
27 approval to completion. The foregoing time periods shall be considered the "Reasonable Efforts Response  
28 Period" and shall be equally applicable to the City's review and approval of a Supplemental Environmental  
29 Remediation Plan or any modifications or amendments to such documents. Peregrine shall submit to the  
30 City a copy of any drafts of the Supplemental Environmental Assessment, as they are prepared, for the  
31 City's review and comment. If either the City or Peregrine reasonably believes that the proposed  
32 Supplemental Environmental Assessment should be the subject of a review by another environmental  
33 consultant, prior to submission to DEQ, the other Party shall not unreasonably withhold its consent to  
34 such further review. Whenever an Environmental Assessment, Supplemental Environmental Assessment,  
35 Environmental Remediation Plan or any modification or amendment thereto is required by this  
36 Agreement to be submitted to the City prior to submittal to DEQ, Peregrine shall nevertheless submit such  
37 document to DEQ prior to submittal to the City, if required by applicable Law.

38           **6.1.4** In the case of discovery of an Environmental Hazard requiring immediate action,  
39 nothing in this Section shall prevent Peregrine from undertaking the immediate action necessary to  
40 remediate the Environmental Hazard to the extent required to alleviate the immediate concern, and  
41 stabilize the environmental condition of the Expansion Site sufficiently to otherwise proceed under this  
42 Section; provided that Peregrine will make reasonable attempts to reach the City's Construction  
43 Representative before taking action. Costs of such immediate action will be Peregrine's sole cost. An  
44 Environmental Hazard requires immediate action if a reasonable person would take action to remediate



1 the Environmental Hazard to control a threat to human health and the environment prior to continuing  
2 the Expansion Improvements.

### 3 6.2 Environmental Remediation Plan

4 6.2.1 If required by a Supplemental Environmental Assessment, Peregrine with the  
5 assistance of an environmental consultant reasonably acceptable to the City, shall develop a remediation  
6 plan for the Expansion Site ("Environmental Remediation Plan"). The Environmental Remediation Plan  
7 shall include an estimate of the cost of implementing the Environmental Remediation Plan. Peregrine shall  
8 submit any Environmental Remediation Plan to the City prior to any applicable submittal to DEQ, for the  
9 City's review and reasonable approval, which review and approval shall be completed within the  
10 Reasonable Efforts Response Period. Peregrine shall submit, as necessary, the Environmental Remediation  
11 Plan to DEQ for its review and approval, but only after the City's review and approval. If either the City or  
12 Peregrine reasonably believes that the proposed Environmental Remediation Plan should be the subject  
13 of a review by another environmental consultant, prior to submission to DEQ, the other Party shall not  
14 unreasonably withhold its consent to such further review. Peregrine shall provide the City with a copy of  
15 the Environmental Remediation Plan, as approved by DEQ, promptly after receipt of such approval.

16 6.2.2 With respect to Environmental Hazards identified in a Supplemental  
17 Environmental Assessment that require Remediation Work, Peregrine shall cause the Contractor to  
18 develop its construction schedule in coordination with the Remediation Work and Peregrine will  
19 coordinate its Remediation Work with the Contractor.

### 20 6.3 Compliance with Environmental Permits

21 Peregrine shall comply with all permits and licenses issued in connection with any Supplemental  
22 Environmental Assessment or Environmental Remediation Plan in, on, under, or about the Expansion Site.  
23 Peregrine and City shall notify each other of any Releases of Environmental Hazards onto or from the  
24 Expansion Site, of which the notifying party has knowledge, as soon as is reasonably possible.

### 25 6.4 Payment of Environmental Costs

26 Except for environmental hazards created or exacerbated by the City, its agents or representatives  
27 after the Effective Date, all Environmental Remediation Costs of the Expansion will be paid by Peregrine.  
28 All reasonably foreseeable Environmental Remediation Costs will be included in the Expansion scope and  
29 Expansion Budget "Environmental Remediation Costs" means (a) the total of the costs of preparation of  
30 all Supplemental Environmental Assessments and Environmental Remediation Plans, and (b) the cost of  
31 Environmental Remediation as required by an Environmental Remediation Plan or otherwise by applicable  
32 Laws. Any disputes under this Section 6.4 shall be resolved by Dispute Resolution.

### 33 6.5 Environmental Indemnifications

34 6.5.1 The Parties are only giving the indemnities set forth below. Except for the  
35 indemnified persons specifically mentioned below, no person shall be a third-party beneficiary of the  
36 provisions of this Section 6.5 nor shall the provisions of this Section 6.5 be deemed to create a standard  
37 of care or conduct with respect to any such person not specifically mentioned as an indemnified person.

38 6.5.2 Peregrine shall defend, hold harmless, and indemnify the City, its successors and  
39 assigns under this Agreement or the Related Agreements, and its elected and appointed officers,

1 employees and agents, from any and all Losses arising from the Release by Peregrine or Peregrine's  
2 employees, agents, contractors or sub-contractors, of Environmental Hazards onto, in, under, over or  
3 from the Expansion Site or the Stadium after the Effective Date, and all costs associated with such  
4 indemnification obligations shall be paid by Peregrine.

5 **6.5.3** To the extent allowed by Laws and subject to the limitations of the Oregon  
6 Constitution and the Oregon Tort Claims Act, the City shall defend, hold harmless, and indemnify  
7 Peregrine, its successors and assigns under this Agreement or the Related Agreements, and its officers,  
8 employees and agents, from any and all Losses arising from the Release by the City or City's employees,  
9 agents, contractors, or sub-contractors (excluding Peregrine and each Retained Parties), of Environmental  
10 Hazards onto, in, under, over or from the Expansion Site or the Stadium after the Effective Date, and all  
11 costs associated with such indemnification obligations shall be borne and paid by the City.

## 12 **6.6 Remediation Work Report**

13 If any Environmental Remediation is performed pursuant to this Section 6, Peregrine shall provide  
14 to the City, on or prior to the date of Substantial Completion of the Expansion Improvements, a written  
15 report (with maps or diagrams, as necessary for descriptive purposes) identifying all Remediation Work  
16 completed and its location; Remediation Work, if any, remaining to be done and its location; and any on-  
17 going monitoring or other special procedures, operations, facilities and their location required as a result  
18 of the Remediation Work or the continued or potential existence of Environmental Hazards on the  
19 Expansion Site or at the Stadium.

## 20 **6.7 Following Substantial Completion**

21 Following Substantial Completion of all of the Expansion Improvements, but subject to the  
22 provisions of Section 6.6, the Operating Agreement shall govern and control as to the respective  
23 responsibilities and liabilities of the Parties for Supplemental Environmental Assessment and Remediation  
24 of Environmental Hazards on the Expansion Site and at the Stadium, but the indemnification provisions of  
25 Section 6.8 shall survive and continue to be effective after Substantial Completion of all the Expansion  
26 Improvements.

## 27 **6.8 Indemnification From Third Parties**

28 The City may seek indemnification or contribution from any third party potentially liable for any  
29 Environmental Hazards on the Expansion Site or at the Stadium. Any net amounts (after the City's costs  
30 of recovery) recovered by the City pursuant to such indemnification or contribution shall be used to  
31 reimburse the original source of payment (i.e., the City or Peregrine) and the balance, if any, shall belong  
32 to the City. Accordingly, for example, if the Environmental Remediation Costs are \$700,000, and were paid  
33 by Peregrine, and the City recovers \$1,000,000 net from responsible third parties, \$700,000 shall be used  
34 to repay Peregrine, and the balance of \$300,000 shall belong to the City without restriction. If Peregrine  
35 believes that the City has a claim for indemnification or contribution from a third party with respect to  
36 the Expansion Site or the Stadium, or if the City believes that Peregrine has a claim for indemnification or  
37 contribution from a third party with respect to the Expansion Site or the Stadium, and if after thirty (30)  
38 Business Days after written demand to the Party that would otherwise own the claim for indemnification  
39 or contribution, that Party declines or fails to pursue such claim, then the other Party may demand, and  
40 the Party owning the claim shall not unreasonably withhold or delay, an assignment to the other Party to  
41 pursue any such claim (to the extent such assignment can be lawfully made). Any net recovery received



1 employees and agents, from any and all Losses arising from the Release by Peregrine or Peregrine's  
2 employees, agents, contractors or sub-contractors, of Environmental Hazards onto, in, under, over or  
3 from the Expansion Site or the Stadium after the Effective Date, and all costs associated with such  
4 indemnification obligations shall be paid by Peregrine.

5 **6.5.3** To the extent allowed by Laws and subject to the limitations of the Oregon  
6 Constitution and the Oregon Tort Claims Act, the City shall defend, hold harmless, and indemnify  
7 Peregrine, its successors and assigns under this Agreement or the Related Agreements, and its officers,  
8 employees and agents, from any and all Losses arising from the Release by the City or City's employees,  
9 agents, contractors, or sub-contractors (excluding Peregrine and each Retained Parties), of Environmental  
10 Hazards onto, in, under, over or from the Expansion Site or the Stadium after the Effective Date, and all  
11 costs associated with such indemnification obligations shall be borne and paid by the City.

## 12 **6.6 Remediation Work Report**

13 If any Environmental Remediation is performed pursuant to this Section 6, Peregrine shall provide  
14 to the City, on or prior to the date of Substantial Completion of the Expansion Improvements, a written  
15 report (with maps or diagrams, as necessary for descriptive purposes) identifying all Remediation Work  
16 completed and its location; Remediation Work, if any, remaining to be done and its location; and any on-  
17 going monitoring or other special procedures, operations, facilities and their location required as a result  
18 of the Remediation Work or the continued or potential existence of Environmental Hazards on the  
19 Expansion Site or at the Stadium.

## 20 **6.7 Following Substantial Completion**

21 Following Substantial Completion of all of the Expansion Improvements, but subject to the  
22 provisions of Section 6.6, the Operating Agreement shall govern and control as to the respective  
23 responsibilities and liabilities of the Parties for Supplemental Environmental Assessment and Remediation  
24 of Environmental Hazards on the Expansion Site and at the Stadium, but the indemnification provisions of  
25 Section 6.8 shall survive and continue to be effective after Substantial Completion of all the Expansion  
26 Improvements.

## 27 **6.8 Indemnification From Third Parties**

28 The City may seek indemnification or contribution from any third party potentially liable for any  
29 Environmental Hazards on the Expansion Site or at the Stadium. Any net amounts (after the City's costs  
30 of recovery) recovered by the City pursuant to such indemnification or contribution shall be used to  
31 reimburse the original source of payment (i.e., the City or Peregrine) and the balance, if any, shall belong  
32 to the City. Accordingly, for example, if the Environmental Remediation Costs are \$700,000, and were paid  
33 by Peregrine, and the City recovers \$1,000,000 net from responsible third parties, \$700,000 shall be used  
34 to repay Peregrine, and the balance of \$300,000 shall belong to the City without restriction. If Peregrine  
35 believes that the City has a claim for indemnification or contribution from a third party with respect to  
36 the Expansion Site or the Stadium, or if the City believes that Peregrine has a claim for indemnification or  
37 contribution from a third party with respect to the Expansion Site or the Stadium, and if after thirty (30)  
38 Business Days after written demand to the Party that would otherwise own the claim for indemnification  
39 or contribution, that Party declines or fails to pursue such claim, then the other Party may demand, and  
40 the Party owning the claim shall not unreasonably withhold or delay, an assignment to the other Party to  
41 pursue any such claim (to the extent such assignment can be lawfully made). Any net recovery received

1 by Peregrine from pursuing such claim with respect to the Expansion Site or the Stadium shall be applied  
2 first to repay Environmental Remediation Costs paid by Peregrine and then to the City. This Section 6.8  
3 shall survive the termination of this Agreement.

4 **SECTION 7** DISCRETIONARY APPROVALS, CITY COOPERATION

5 **7.1 Cooperation By City**

6 The City, in its proprietary capacity, but not its regulatory capacity, shall assist Peregrine and the  
7 Retained Parties by providing, promptly after written request, information in its possession relating to the  
8 Expansion Improvements, the Expansion Site, City Utilities, Private Utilities and all other aspects of the  
9 Expansion. Such information shall be provided by the City to Peregrine merely as an accommodation  
10 without any warranty or representation or liability on the part of the City as to the accuracy of such  
11 information or the correctness thereof or the suitability of such information for the purposes of or use  
12 thereof by Peregrine under this Agreement or the Related Agreements. Peregrine, directly or indirectly  
13 through Retained Parties, shall regularly consult with the City's various Bureaus, the City's Design  
14 Commission and their respective staffs for the purpose of keeping the City informed of the design of the  
15 Expansion Improvements; provided, however, that Peregrine shall comply with City's rules prohibiting or  
16 otherwise governing ex parte contacts in quasi-judicial proceedings or other proceedings before City  
17 bodies. Consistent with applicable Laws, procedural requirements, and staffing availability, the City shall  
18 consider ways to expedite the permits and other approvals and other actions required to be provided or  
19 taken by the City in connection with the design, construction, occupancy, and use of the Expansion  
20 Improvements, provided that the City shall not incur any liability to Peregrine for its failure to do so.

21 **7.2 Discretionary Approvals**

22 Peregrine shall be responsible for applying for and obtaining all discretionary Governmental  
23 approvals that are necessary for the construction of the Expansion Improvements and the operation of  
24 the Expansion. If any such discretionary approvals are appealed beyond the City, then the Peregrine shall  
25 be responsible, at its own cost and expense, for the costs of bringing or defending any such appeal. The  
26 City, at its election, may support such efforts related to an appeal, but will not incur any costs related to  
27 such appeal. In the case of such appeals, the Parties agree to continue with the construction of the  
28 Expansion Improvements, unless the Parties are ordered to stop such construction by the City, in its  
29 regulatory capacity, by the State of Oregon Land Use Board of Appeals, or by a court of competent  
30 jurisdiction. Nothing in this Section 7 compromises or limits the City's regulatory authority.

31 **7.3 Construction Permits**

32 All permits required to authorize the construction of the Expansion Improvements, beyond the  
33 approvals referred to in Section 7.2, shall be obtained by Peregrine, and the City shall, if necessary, join in  
34 any permit applications as owner of the Stadium. The fees payable in obtaining such permits are to be  
35 borne and paid solely by Peregrine.



1    **SECTION 8**     DESIGN AND CONSTRUCTION DOCUMENTS

2                   **8.1 Design Contracts and Ownership of Design Documents**

3                    **8.1.1** Any fees or expenses under any Retained Party Contracts for the design and  
4 architecture of the Expansion Improvements shall be borne solely by Peregrine.

5                    **8.1.2** All drawings, specifications, and any other documents prepared by Retained  
6 Parties that are architects, engineers, or other professional services consultants for the Expansion  
7 (collectively, "Design Documents") shall be owned by the City and Peregrine. Peregrine shall require in its  
8 contracts with such Retained Parties that the Retained Parties not use the Design Documents for any other  
9 project without the prior written consent of the City and Peregrine. As to those Design Documents or any  
10 portion thereof not transferred, or the transfer of which is held unenforceable, Peregrine shall cause any  
11 such Retained Parties to grant to Peregrine and the City a paid-up, non-exclusive, world-wide, irrevocable,  
12 transferable license, for Peregrine and the City to use, reproduce, and have reproduced the Design  
13 Documents, and for Peregrine and the City to allow others to use, reproduce, and have reproduced, such  
14 Design Documents in performing services of construction for the Project and otherwise in connection with  
15 the Stadium. Submittals or distributions necessary to meet official regulatory requirements or for other  
16 purposes relating to completion of the Expansion are not to be construed as a publication in derogation  
17 of the Parties' reserved rights. Peregrine shall cause all Retained Party Contracts related to the  
18 preparation of Design Documents to expressly acknowledge the Parties' rights under this Section.

19                   **8.2 FF&E**

20                   **8.2.1 Existing FF&E.** The Expansion Improvements include existing furniture, movable  
21 fixtures, and equipment in the Stadium, all of which will be listed on Exhibit 8.2.1 and attached to this  
22 Agreement no later than December 31, 2017 (the "Existing FF&E"). The Existing FF&E falls into categories,  
23 each a separate column on Exhibit 8.2.1: the Existing FF&E which will remain at the Stadium or be stored  
24 elsewhere during construction, which is shown in column 1; the Existing FF&E which Peregrine has agreed  
25 to remove from the Stadium, which is shown in column 2; and the surplus equipment which is the property  
26 of City and may be sold or otherwise disposed of by the City in its sole discretion, which is shown in column  
27 3. The items listed in column 2 of Exhibit 8.2.1 will be disposed of by Peregrine in accordance with  
28 applicable Laws. With respect to the Existing FF&E that will remain at the Stadium, the City hereby grants  
29 Peregrine a license to use this Existing FF&E throughout the term of the Operating Agreement.

30                   **8.2.2 New FF&E.** The Expansion Improvements also include new furniture, fixtures, and  
31 equipment, generally anticipated as those items listed on the attached Exhibit 8.2.2 (the "New FF&E").  
32 Peregrine agrees to acquire, at its sole cost, the New FF&E as necessary to Substantially Complete the  
33 Expansion Improvements. Before Peregrine purchases New FF&E, Peregrine will provide the City with  
34 detail sufficient for the City to determine what is to be acquired and that such New FF&E will satisfy its  
35 intended purpose (e.g. manufacturer and model number). Such detailed inventory will be approved by  
36 the City using the process in Section 8.3 and may be reviewed and approved on a rolling basis as New  
37 FF&E is purchased. By no later than Final Completion, Peregrine shall provide the City a final detailed  
38 inventory of the New FF&E and the values of such New FF&E. The New FF&E will be owned by the City,  
39 will be located at the Stadium and not used elsewhere, and will be used, maintained, and operated subject  
40 to the terms of the Operating Agreement. With respect to the New FF&E, the City hereby grants Peregrine  
41 a license to use this New FF&E throughout the term of the Operating Agreement.

1           **8.3 Required Approvals**

2           The provisions of this Section 8.3 set forth the procedure for preparation by Peregrine and review  
 3 by the City, in its proprietary capacity, of plans, specifications, and construction drawings for the  
 4 Expansion Improvements (each, a "Required Approval"). These provisions are not applicable to the  
 5 regulatory procedures for application, review, and issuance of permits and approvals of the City and other  
 6 governmental organizations necessary for construction of the Expansion Improvements. Peregrine will  
 7 submit to the City's Office of Management and Finance team the indicated types and quantities of  
 8 documents listed with each Required Approval below, including digital copies in PDF format posted to the  
 9 architect's FTP site. Noted below are the anticipated target dates for submission of the document sets, as  
 10 provided to the City by Peregrine's team, and Peregrine agrees to make good faith efforts to provide the  
 11 document sets by the applicable target date. The City's deadline for approval will be the end of the  
 12 fifteenth (15th) Business Day following the Business Day on which the relevant documents are submitted;  
 13 provided, however, the City agrees to make good faith efforts to provide its reviews and approvals as  
 14 quickly as reasonably possible. Disputes regarding the reasonableness of any City disapproval of all or  
 15 portions of the Required Approval documents for any portion of the Expansion Improvements shall be  
 16 resolved in accordance with Dispute Resolution provided in this Agreement.

17           **8.3.1 Documents Reviewed Before the Effective Date.** The following documents have  
 18 already been reviewed by the City:

19                   **8.3.1.1 75% Design Development Documents and 30% Public Work Documents.**  
 20 The Architect prepared a complete set of 75% Design Development Documents for the Expansion  
 21 Improvements and submitted these to the City on June 23, 2017. The Architect also prepared 30% Public  
 22 Work Documents and submitted these to the City in early June 2017. The City sent a letter to Peregrine  
 23 on July 17, 2017, stating that it was not approving the 75% Design Development Documents or the 30%  
 24 Public Works Review Documents and providing issues to be addressed in the next round of documents.

25                   **8.3.1.2 100% Design Development Documents and 100% Construction**  
 26 **Documents for the Phase One Work.** The Architect prepared a complete set of (a) 100% Design  
 27 Development Documents for the Expansion Improvements and (b) 100% Construction Documents for the  
 28 Phase One Work, which were approved by the City on September 6, 2017.

29                   **8.3.1.3** The MLS Letter, defined in Section 4.6, has been approved by City.

30                   **8.3.1.4** Public Works Documents for SW 18<sup>th</sup> have been approved by City.

31           **8.3.2 Required Approvals After the Effective Date.** Peregrine will follow the procedure  
 32 provided in this Section 8.3 to obtain City approval of the following documents:

33                   **8.3.2.1** A complete set of 50% Construction Documents for the Phase Two Work,  
 34 which must be consistent with the City-approved 100% Design Development Documents.

35                                   Documents Required: One (1) specification, two (2) half-sized sets, and a  
 36                                   digital copy of all documents submitted for approval.

37                                   Target Submission Date: 12/1/17  
 38

1                                   **8.3.2.2** A FF&E initial proposal list of New FF&E associated with the Expansion.

2                                   Documents Required: Pursuant to Section 8.2, proposed lists of Existing  
3                                   FF&E and New FF&E to become Exhibit 8.2.1 and Exhibit 8.2.2  
4                                   respectively.

5  
6                                   Target Submission Date: Preliminary list of New FF&E shown in Exhibit  
7                                   8.2.1, future submissions on a rolling basis as provided in Section 8.2.2.

8                                   **8.3.2.3** A complete set of 100% Construction Documents for the Phase Two Work  
9                                   and the Phase Two Work Permit Submittal, which must be consistent with the City-approved 50%  
10                                   Construction Drawings (Phase Two Work).

11                                   Documents Required: One (1) full-sized set, two (2) half-sized sets, one  
12                                   (1) specification, and a digital copy of all documents submitted for  
13                                   approval.

14  
15                                   Target Submission Date: 1/2/18

16                                   **8.3.2.4** A complete set of 30% Public Works Documents for SW 20<sup>th</sup>.

17                                   Documents Required: One (1) full-sized set, two (2) half-sized sets, one  
18                                   (1) specification, and a digital copy of all documents submitted for  
19                                   approval.

20  
21                                   Target Submission Date: 12/8/17

22  
23                                   **8.3.2.5** A complete set of 60% Public Works Documents for SW 20<sup>th</sup>, which must  
24                                   be consistent with the City-approved 30% Public Works Documents.

25                                   Documents Required: One (1) half-sized set and a digital copy of all  
26                                   documents submitted for approval.

27  
28                                   Target Submission Date: 1/26/18

29                                   **8.3.2.6** A complete set of 90% Public Works Documents for SW 20<sup>th</sup>, which must  
30                                   be consistent with the City-approved 60% Public Works Documents.

31                                   Documents Required: One (1) half-sized set and a digital copy of all  
32                                   documents submitted for approval.

33  
34                                   Target Submission Date: 4/6/18

35                                   **8.3.3** Subject to the agreement of the Parties to work in good faith to mutually agree  
36                                   on reductions to the scope of the Expansion in accordance with Section 8.6.2, Dispute Resolution  
37                                   regarding the reasonableness of a disapproval of the 100% Construction Documents shall not yield a result



1 that would require the City to agree to 100% Construction Documents for the Expansion Improvements  
2 which would reduce the overall quantity or overall quality of the Expansion Improvements from the 100%  
3 Design Development Documents. The review and approval of 100% Construction Documents pursuant to  
4 this Section 8.3 shall be separate from and in addition to any regulatory review and approval process  
5 provided for under the City Codes. City approval or deemed approval of 50%, 75%, and 100% Construction  
6 Documents (or determinations under Dispute Resolution) shall not (x) constitute or be used, either  
7 directly or indirectly or in any manner or for any purpose, as an approval of or statement that the 50%,  
8 75%, or 100% Construction Documents, as applicable, are in conformance with applicable City Codes; or  
9 (y) operate or act as a waiver of any rights or remedies of the City as to any defect in the 50%, 75%, or  
10 100% Construction Documents, as applicable, or in the construction or installation of the element of  
11 Expansion Improvements to which they relate. In the event of any dispute regarding the approval of 100%  
12 Construction Documents, construction shall not commence based on the disputed portion of the 100%  
13 Construction Documents until the Dispute Resolution has been completed and the 100% Construction  
14 Documents, or disputed portion thereof, are either approved or deemed approved by the City. The Parties  
15 acknowledge and agree that in no case will the City bear responsibility for cost increases arising out of  
16 Dispute Resolution related to 100% Construction Documents.

#### 17 **8.4 Process for Required Approvals**

18 For each Required Approval, the City and Peregrine agree that:

19 **8.4.1** Documents submitted for approval will be developed by Peregrine using the City-  
20 approved Retained Parties.

21 **8.4.2** The City shall have fifteen (15) Business Days after a complete submittal of  
22 documents is received from Peregrine to review, approve, conditionally approve, or disapprove some or  
23 all of the submitted documents. The City's decisions with respect to the Required Approvals are not  
24 subject to Dispute Resolution or any judicial review. The City shall approve, conditionally approve, or  
25 disapprove, in writing, some or all of the submitted documents. If the City disapproves any submitted  
26 documents, it shall state the reasons for such disapproval.

27 **8.4.3** During any City review period, Peregrine and its Retained Parties shall be readily  
28 available to the City to respond to the City's questions and comments with respect to the documents  
29 being reviewed.

30 **8.4.4** If the City fails to approve, conditionally approve, or disapprove the documents  
31 submitted to it within such fifteen (15) Business Day period, such documents shall be deemed  
32 disapproved; provided, however, that Peregrine shall have the right, after the fifteen (15) Business Day  
33 period has passed, to demand in writing that the City approve, conditionally approve, or disapprove the  
34 documents within three (3) Business Days after receipt of the demand. Any such written demand by  
35 Peregrine shall not be effective unless it is accompanied by a clear statement from Peregrine in capital  
36 letters that failure of the City to respond within three (3) Business Days after receipt shall be deemed  
37 conditional approval of such documents. If the City fails to respond to Peregrine's demand within three  
38 (3) Business Days by approving, conditionally approving, or disapproving such documents, the documents,  
39 as submitted, shall be deemed conditionally approved.

**8.5 City Changes**

From time to time, to the extent compatible with the Expansion Schedule, the City may include City Changes within the Expansion Improvements. The City shall give written notice to Peregrine of any requested City Changes, and Peregrine's consent to a City Change shall not be unreasonably withheld or delayed, but in any event Peregrine shall respond to the City's written request within ten (10) Business Days after receipt. Peregrine may withhold its consent only if: (a) the City Change is incompatible as to design, quality, or operating characteristics with the approved 100% CDs for Phase 1 or Phase 2; (b) the construction or operation of the City Change would increase the net costs of the construction or operation of the Expansion Improvements, including the costs relating to extending or altering the Expansion Schedule, unless the City agrees to pay for any such increased costs; or (c) the City Change would cause a material delay in the Expansion Schedule. Disputes regarding Peregrine disapproval under this Section 8.5 shall be resolved pursuant to Dispute Resolution.

**8.6 Responsibility for Costs; Cost Overruns**

**8.6.1** The City will have no obligation to contribute money to the Expansion; rather, the entirety of the cost of the Expansion will be borne by Peregrine. Peregrine shall pay the full cost of designing, permitting, constructing, and managing the Expansion, including any costs in excess of the Expansion Budget, the GMP, or both (collectively, "Cost Overruns"), whether or not arising from acts or omissions of Peregrine, and including without limitation Cost Overruns associated with substitutions, additions, selection of alternates, increases over allowances, schedule changes, and risks of Changed Conditions, Acts of God, Excused Delays, and regulatory changes. This Section 8.6.1 shall survive the termination of this Agreement.

**8.6.2** Prior to the start of each "Construction Phase", meaning the Phase One Work or the Phase Two Work, the scope and budget of the Expansion shall have been approved by each Party in writing and, to the extent necessary, by the City in its regulatory capacity. If prior to starting a Construction Phase the estimated budget for completing the Expansion exceeds the Expansion Budget, Peregrine and the City agree to work in good faith to mutually agree on reductions to the scope of the Expansion so that the estimated cost of the completed Expansion does not exceed the Expansion Budget, unless Peregrine otherwise agrees to increase the Expansion Budget. The scope and budget for each Construction Phase shall be that approved by the parties when the GMP for the Construction Phase is approved by each Party in writing, and which shall be subject to Change Orders approved by the parties.

**8.6.3** Each Party shall bear its own costs of defense of any litigation filed by a third party to challenge the validity of this Agreement, the Related Agreements, or any approvals or actions of the City or other public body or officers in authorizing or implementing this Agreement and Related Agreements. This Section 8.6.3 shall survive the termination of this Agreement.

**8.6.4** The City will pay the cost of legal and professional fees necessary to oversee the City's interests and responsibilities during the design and construction of the Expansion.

**SECTION 9 CONSTRUCTION OF PROJECT IMPROVEMENTS**

Peregrine, at its cost and expense, will design and construct the Expansion in accordance with all applicable Laws, rules, and regulations, including compliance with any and all ADA requirements triggered

1 by the Expansion. Peregrine will be responsible for entering into the General Construction Contract for  
2 and managing the construction of the Expansion with the Retained Parties.

### 3 9.1 Contract With General Contractor, License

4 9.1.1 Peregrine agrees to enforce the General Construction Contract for the benefit of  
5 the City and to promptly notify the City of any material breach of the General Construction Contract by  
6 the Contractor or any circumstances which with only the passage of time would constitute a material  
7 breach of the General Construction Contract.

8 9.1.2 The General Construction Contract will have a guaranteed maximum price  
9 ("GMP").

10 9.1.3 Peregrine, at its cost and expense, shall obtain any and all contractor or developer  
11 licenses required by applicable Laws. Peregrine shall provide the City with copies of any and all such  
12 licenses obtained.

### 13 9.2 Expansion Improvements

14 9.2.1 Peregrine shall construct or cause the construction of the Expansion  
15 Improvements, in a good and workmanlike manner, in accordance with the 100% Construction  
16 Documents and before the Final Completion Date, subject only to Excused Delays or breaches by the City  
17 under this Agreement or any of the Related Agreements. The Expansion shall be performed in accordance  
18 with the standards and requirements related to Restoration of the Stadium set forth in Section 12.4 of the  
19 Operating Agreement.

20 9.2.2 Peregrine shall be responsible for securing all necessary approvals, consents, and  
21 permits for the design and construction of the Expansion Improvements. In accordance with the  
22 Expansion Schedule, Peregrine shall obtain on behalf of the City all occupancy, use, and operation permits  
23 from the City or any of its departments or agencies required to be obtained for the Expansion  
24 Improvements, and such other licenses, permits, and similar authorizations from governmental  
25 authorities having jurisdiction over the Expansion Improvements as may be necessary. The City will  
26 cooperate with and assist Peregrine in obtaining, and shall join in any application for mutually agreed  
27 upon licenses, permits, and similar authorizations for the Expansion Improvements, where the City must  
28 sign the application in order for the application to be complete.

29 9.2.3 The work of building the Expansion Improvements includes incorporation of new  
30 structural elements and building systems into an existing structure. Peregrine shall be responsible for  
31 ensuring that the elements, structures, and systems of the Expansion Improvements designed and  
32 constructed by the Retained Parties are consistent with and are properly integrated with all other  
33 elements, structures, and systems of the Stadium, and to ensure that these facilities when completed will  
34 function properly in an integrated manner with the existing Stadium and in accordance with Laws and the  
35 requirements of this Agreement.

36 9.2.4 Peregrine shall, and shall make Reasonable Efforts to cause all Retained Parties  
37 to, take all safety measures reasonably appropriate and necessary to protect: (a) all persons at and about  
38 the Stadium from injury or damage caused by or resulting from the performance of construction of the  
39 Expansion Improvements; (b) the work and materials and equipment to be incorporated therein, whether  
40 in storage at the Stadium or offsite; and (c) other property at the Stadium or adjacent thereto, such as



1 trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal,  
2 relocation, or replacement in the course of construction. Peregrine shall, and shall cause all Retained  
3 Parties to, (x) give all notices and comply with applicable Laws bearing on safety of persons or property or  
4 their protection from damage, injury, or loss and (y) erect and maintain reasonable safeguards for safety  
5 and protection, including installation of barriers and posting danger signs and other warnings against  
6 hazards, promulgating safety regulations and notifying users of the Stadium and adjacent sites and  
7 utilities. Peregrine shall cause the Contractor to prepare and submit to the City a written safety program  
8 for the Expansion prior to Contractor's entry into the Stadium. When use or storage of explosives or other  
9 Environmental Hazards or equipment or unusual methods are necessary for execution of the work,  
10 Peregrine shall cause the Retained Parties to exercise utmost care and carry on such activities under  
11 supervision of properly qualified personnel. Peregrine shall, at its sole expense, promptly remedy any  
12 damage or loss (other than damage or loss insured under property insurance required under this  
13 Agreement) to property referred to in this Section 9.2.4 caused in whole or in part by the negligence of  
14 Peregrine, of a Retained Party, or of anyone directly or indirectly employed by any of them, except to the  
15 extent of damage or loss attributable to the negligence of the City. Peregrine shall designate and identify  
16 to the City a responsible person at the Expansion Site whose duty shall be the prevention and reporting  
17 of accidents, who shall be the project superintendent unless otherwise designated by Peregrine in writing  
18 to the City and Architect.

19 **9.2.5** Peregrine may operate in the Stadium during construction of the Expansion  
20 Improvements in accordance with the Operating Agreement and all additional rules, regulations, and  
21 safety procedures related to such construction. No ticketed events have been or will be scheduled to  
22 occur at the Stadium during construction of the Expansion Improvements nor will construction of the  
23 Expansion Improvements occur during any scheduled ticketed events. The foregoing sentence does not  
24 preclude (a) scheduling ticketed events during times of no construction activity and (b) events during  
25 construction held outside the area in which Expansion Improvements are under construction. Peregrine  
26 shall defend, indemnify, and hold harmless the City, and the City Indemnitees from any and all Claims  
27 arising out of events or other operations held at the Stadium during construction.

### 28 **9.3 City's Right To Inspect and Receive Information**

29 Peregrine shall provide to the City timely information regarding the progress of the Expansion  
30 Improvements through every phase of design and construction.

31 **9.3.1** During the Term, Peregrine shall submit to the City's Construction Representative  
32 not less frequently than monthly a report in such form and detail as may be reasonably acceptable to the  
33 City, as to the progress of design, financing, budgets, schedules, cost estimates, and upcoming approvals  
34 related to the Expansion.

35 **9.3.2** The City's Construction Representative and Peregrine's Construction  
36 Representative, or their respective designees, shall meet with and consult with each other, not less than  
37 every two weeks, regarding the status of the Expansion Improvements. Such meetings shall generally be  
38 held at the Stadium unless the Construction Representatives or Alternates otherwise agree on a different  
39 location. Peregrine shall give the City's Construction Representative advanced written or electronic notice  
40 of all scheduled meetings with the Architect and Contractor, and the City's Construction Representative  
41 will be given the opportunity to attend any of such meetings. Peregrine will forward to the City's  
42 Construction Representative all minutes of such meetings and any other Expansion meetings.

1           **9.3.3** The City's Construction Representative, and its agents as designated in writing to  
2 Peregrine, shall have access to bidding materials and the Expansion Site and the right to inspect the  
3 Expansion Improvements at all reasonable times to determine the status of selection of subcontractors,  
4 construction, and compliance with the 100% Construction Documents, and as otherwise provided for in  
5 this Agreement. Peregrine shall cause the Retained Parties to make themselves available for access by the  
6 City's Construction Representative and its agents to answer questions and provide information; provided  
7 that, unless the Parties have agreed otherwise, such Retained Parties need not accept direction from the  
8 City's Construction Representative unless given through Peregrine's Construction Representative.

9           **9.3.4** Peregrine shall provide the City's Construction Representative access to copies of  
10 all daily, weekly, and monthly reports or bulletins prepared by the Architect, the Contractor, or the  
11 Expansion Manager with respect to the Expansion Improvements or that relate to the Expansion  
12 Improvements. Peregrine shall cause to be maintained at the Stadium for review by the City's  
13 Construction Representative one record copy of all drawings, specifications, addenda, Change Orders and  
14 other construction documentation, in good order and marked currently to record field changes and  
15 selections made during construction, and one record copy of approved shop drawings, product data,  
16 samples, and similar submittals. These shall be available to the City's Construction Representative to  
17 review at any reasonable time.

18           **9.3.5** If during its inspections of the Expansion Improvements, the City observes safety  
19 hazards, the City may inform Peregrine and the Contractor of those safety hazards, and Peregrine will  
20 cause the Contractor to promptly remedy any actual safety hazards. The City has no responsibility to  
21 inspect the Expansion Improvements for safety hazards or to report any observed safety hazards to  
22 Peregrine or the Contractor. The City shall have no liability on account of its observation or non-  
23 observation of safety hazards and its reporting or non-reporting of safety hazards to Peregrine or the  
24 Contractor.

25           **9.3.6** A representative of the City will be entitled to attend all Owner-Architect-  
26 Contractor ("OAC") meetings, expected to be held weekly, except progress payment review meetings, and  
27 all job walks related to the Expansion. As used in this paragraph, "job walks" means weekly walks of the  
28 construction site following OAC meetings and any other gathering of any combination of Peregrine  
29 representatives, the Architect, Contractor, subcontractors, and other design professionals to walk the  
30 Expansion Site and to seek resolution of design or construction issues related to the Expansion. All City  
31 employees or representatives entering the Expansion Site shall attend a safety orientation program by  
32 the Contractor and execute a liability waiver prior to their initial visit to the Expansion Site. In addition, all  
33 City employees and representatives shall be escorted by the Contractor and wear proper safety gear while  
34 at the Expansion Site.

35           **9.3.7** Peregrine will include in the Retained Party Contracts any necessary provisions to  
36 implement this Section 9.3.

37           **9.3.8** Nothing in this Section 9.3 shall limit the rights of the City under its regulatory  
38 powers as provided in the City Code.

#### 39           **9.4 Change Orders**

40           **9.4.1** In order to ensure that the City's interest in the Stadium is protected from adverse  
41 changes in the design of the Expansion, including, but not necessarily limited to, changes to the quality of



1 materials used, changes resulting in increased ongoing repair and maintenance expenses, and changes  
2 requiring additional City approval in the City's regulatory capacity, Peregrine shall notify the City of each  
3 Change Order to the Expansion Improvements and the City shall have the right, in its sole discretion, to  
4 approve each Change Order in accordance with the process in Section 9.4.2.

5 **9.4.2** The City's Construction Representative and Peregrine's Construction  
6 Representative shall each have the authority to separately approve Change Orders on behalf of the City  
7 and Peregrine, respectively. The City's Construction Representative may not agree to a Change Order that  
8 creates an obligation for the City to contribute money to the Expansion. One of the City's Construction  
9 Representatives and one of Peregrine's Construction Representatives shall be available upon not more  
10 than twenty-four (24) hours' notice to come to the Expansion Site to discuss a proposed Change Order.  
11 All Change Orders shall be in writing and signed by Peregrine's Construction Representative, and Peregrine  
12 shall promptly submit the same to the City's Construction Representative. The City's Construction  
13 Representative shall promptly approve or disapprove the Change Order, but in no event later than five (5)  
14 Business Days after receipt from Peregrine. If the City fails to approve a proposed Change Order within  
15 such 5-Business-Day period after receipt of a complete Change Order, the Change Order shall be deemed  
16 approved by the City. The City's approval of a Change Order shall not be unreasonably withheld.

#### 17 **9.5 Guaranty of Expansion Improvements**

18 The Final Completion of the Expansion and payment of all costs and expenses associated with the  
19 Expansion, including Cost Overruns will be guaranteed by Henry Merritt Paulson, Jr. and Henry Merritt  
20 Paulson, III, pursuant to the Expansion Completion Guaranty.

#### 21 **9.6 As Built Survey**

22 Within one hundred twenty (120) days after Substantial Completion of the Expansion  
23 Improvements, Peregrine shall provide the City with two (2) hard copies of and an electronic copy of an  
24 "as built" survey for those Expansion Improvements, if any, that alter the footprint of the Stadium as  
25 compared to the footprint of the Stadium as of the Effective Date. Peregrine shall be responsible for and  
26 pay all costs of the "as built" survey for the Expansion Improvements. This Section 9.6 shall survive the  
27 termination of this Agreement until the as-built survey for the Expansion Improvements is delivered to  
28 the City.

#### 29 **9.7 Liens**

30 In the event any contractor's lien, Little Miller Act claim, or other statutory lien shall be filed during  
31 the term of this Agreement against any portion of the Stadium or any portion of the Expansion  
32 Improvements being constructed at the Stadium, or against any payment or performance bonds with  
33 respect to the Expansion Improvements, by reason of labor, services, or materials supplied to, or at the  
34 request of, Peregrine pursuant to any construction of the Expansion Improvements, Peregrine shall pay  
35 and discharge such lien or claim within thirty (30) days after the filing thereof, subject to the provisions of  
36 the following sentence. Peregrine shall have the right to contest the validity, amount or applicability of  
37 any such lien or claim by appropriate legal proceedings, and so long as Peregrine furnishes a bond or  
38 indemnity as provided below, and is prosecuting such contest in good faith, the requirement that it pay  
39 and discharge such items within said thirty (30) day period shall not be applicable. In any event, Peregrine  
40 shall within thirty (30) days after the filing either post a bond in accordance with applicable Laws, or in  
41 the alternative indemnify, or cause a Retained Party to indemnify, against such liens or claims in amount



1 and form satisfactory to induce a title insurance company to insure over such liens without showing any  
2 title exception by reason of such liens. Peregrine shall defend, indemnify, and hold the City harmless from  
3 all loss, damage, liability, expense, or claim whatsoever (including attorneys' fees and other costs of  
4 defending against the foregoing) resulting from the assertion of any such liens or claims provided that this  
5 provision shall not change the obligation of the Party otherwise to pay the cost of the work giving rise to  
6 the lien as provided by other provisions of this Agreement. If such legal proceedings shall be finally  
7 concluded (so that no further appeal may be taken) adversely to Peregrine, Peregrine shall within ten (10)  
8 days thereafter cause the liens or claims to be discharged of record. Any cost or expense contemplated  
9 by this Section 9.7 shall be borne solely by Peregrine. This Section 9.7 shall survive the termination of this  
10 Agreement.

## 11 **9.8 Non-regulatory Punchlist Procedure**

12 **9.8.1** When the Contractor considers the Expansion Improvements, or a portion  
13 thereof which Peregrine and the City agree to accept separately, are substantially complete, the  
14 Contractor shall submit a request to the Architect for an inspection to determine Substantial Completion  
15 and Peregrine shall notify the City in writing at least five (5) Business Days in advance of such inspection  
16 so that the City may attend as well. In advance of the inspection, the Contractor shall prepare and submit  
17 to the Architect and Peregrine a comprehensive list of items that the Contractor believes remain to be  
18 completed or corrected prior to final payment (the "Preliminary Punch List"), which Peregrine shall  
19 transmit to the City. Upon receipt of the Preliminary Punch List, the Architect, in conjunction with  
20 Peregrine, the Contractor, and the City (if the City so elects), shall inspect the Expansion Improvements or  
21 portion thereof to establish whether Substantial Completion has been achieved and to provide input on  
22 the Preliminary Punch List. Following this inspection, the Architect shall review and edit or supplement,  
23 as necessary, the Preliminary Punch List so that it properly reflects all items of Expansion Improvements  
24 which the Architect, Peregrine, and the City believe are not in accordance with the requirements of the  
25 General Construction Contract. The revised Preliminary Punch List shall be submitted to Peregrine and the  
26 City for approval. Approval or disapproval shall be given by the City and Peregrine within five (5) Business  
27 Days after receipt. The Preliminary Punch List approved by Peregrine and the City shall be the "Punch  
28 List". Peregrine shall transmit the Punch List to the Contractor and the City. Before issuance of the  
29 Certificate of Substantial Completion, Peregrine shall cause the Contractor to complete or correct such  
30 items on the Punch List that are necessary to achieve Substantial Completion. When the Contractor  
31 considers the items on the Punch List to be substantially complete, the Contractor shall then submit to  
32 Peregrine a request for another inspection by the Architect. Peregrine will notify the City of all such  
33 additional inspections in the same manner as the notice for the initial inspection, and the City may elect  
34 to participate in any such inspections. If an item on the Punch List is not approved by the City and the  
35 Architect as being satisfactorily completed, Peregrine shall complete or cause the Contractor to complete  
36 the item until it is satisfactorily completed. All such items shall be subject to re-inspection in accordance  
37 with this Section 9.8. Any Dispute between Peregrine and the City with respect to satisfactory completion  
38 of items on the Punch List shall be subject to and resolved by Dispute Resolution. When the Architect, the  
39 City, and Peregrine agree that the Expansion Improvements or portion thereof are substantially complete,  
40 the Architect will prepare a "Certificate of Substantial Completion" which shall establish the date of  
41 Substantial Completion and shall fix the time within which the Contractor shall finish all items on the  
42 Punch List. Each of the Architect, the City, the Contractor, and Peregrine shall sign the Certificate of  
43 Substantial Completion to evidence their respective agreement that the Expansion Improvements or  
44 portion thereof are Substantially Complete.

1           **9.8.2** The Certificate of Substantial Completion shall in no way limit or affect continuing  
2 obligations set forth in this Agreement and Related Agreements. In addition, the City's participation in  
3 Substantial Completion inspections shall not relieve Peregrine from complying with any of the regulatory  
4 requirements regarding the construction of improvements under City Codes and other applicable Laws.  
5 Certificates of Substantial Completion will be in such form as will enable them to be recorded with the  
6 County Clerk of Multnomah County, Oregon.

7           **9.8.3** Upon final completion of all of the Expansion Improvements, the Contractor shall  
8 forward to Peregrine a written notice that the Expansion Improvements are ready for final inspection and  
9 acceptance. Upon receipt, Peregrine will forward the notice to the Architect, who will promptly make such  
10 inspection. Peregrine shall notify the City in writing at least five (5) Business Days in advance of such  
11 inspection so that the City may attend as well. When the Architect, the City, and Peregrine agree that the  
12 Expansion Improvements are complete in accordance with the General Construction Contract and the  
13 Drawings and Specifications, Peregrine and the Architect will submit a written request to the City for  
14 confirmation that the Expansion Improvements are Finally Complete. If the City reasonably agrees that  
15 the Expansion Improvements are Finally Complete, the City shall issue an appropriate instrument (the  
16 "Certificate of Final Completion") so certifying. The Certificate of Final Completion shall be issued by the  
17 City when: (a) the City has received all documents described in Exhibit 9.8.3(a); (b) the City has received  
18 the City's Acknowledgement Form (the form of which is attached as Exhibit 9.8.3(b)) signed by the  
19 Contractor; and (c) Peregrine has removed all rubbish, tools, scaffolding, and surplus materials and  
20 equipment from the Stadium. Final payment shall not be made to the Contractor until the City has issued  
21 the Certificate of Final Completion. The Certificate of Final Completion by the City shall be a conclusive  
22 non-regulatory determination by the City that the Expansion Improvements are Finally Completed but  
23 shall not otherwise limit or affect any continuing obligation of Peregrine under the Related Agreements  
24 or otherwise under this Agreement.

25           **9.8.4** If Peregrine believes that a Certificate of Substantial Completion should be issued  
26 and the City reasonably disagrees, the City shall furnish its objections in writing to Peregrine within five  
27 (5) Business Days after the written request by Peregrine for approval of the issuance of a Certificate of  
28 Substantial Completion, or it shall waive all objections to the Certificate of Substantial Completion and  
29 shall be deemed to have signed it. Upon receipt of the City's objections, Peregrine shall cause the  
30 Contractor to complete the Expansion Improvement in a manner responsive to the objections. Any  
31 Dispute with respect to the Certificate of Substantial Completion shall be subject to Dispute Resolution if  
32 the Dispute Resolution provisions are still in effect or judicial resolution if the Dispute Resolution  
33 provisions are no longer in effect.

#### 34           **9.9 Correction of Material Defects**

35           **9.9.1** During the course of construction of the Expansion Improvements, the City and  
36 Peregrine shall promptly notify each other of any Material Defects of which a Party becomes aware of in:  
37 (a) the 100% Construction Documents; (b) in the work of any of the Retained Parties; or (c) in the  
38 Expansion Improvements. Promptly after notice by the City or actual knowledge by Peregrine of a Material  
39 Defect, Peregrine shall promptly commence and thereafter diligently proceed to correct any such Material  
40 Defect. If the City notifies Peregrine of a Material Defect within five (5) years after Substantial Completion,  
41 Peregrine shall promptly commence and thereafter diligently proceed with the Correction of any such  
42 Material Defect or any Material Defect known by Peregrine. Peregrine shall undertake the Correction in a  
43 manner to minimize interference, to the extent reasonably practical, with the operations of the Expansion



1 Improvements. All costs of such Correction which are not recovered from the Contractor, Architect,  
2 Retained Parties, or third parties shall be borne solely by Peregrine.

3           **9.9.2** If the Correction would not be practicable or economically feasible under the  
4 circumstances and provided that the function, utility, useful life, structural components, and aesthetic  
5 qualities of the Expansion Improvements are not compromised, the Correction need not be made, subject  
6 to the City's reasonable approval, so long as any partial Corrections acceptable to the City that can be  
7 reasonably made are made to the Expansion Improvements.

8           **9.9.3** The obligation of Peregrine to correct Material Defects shall be independent of  
9 the process for identifying and completing the Punch List items pursuant to Section 9.8 (although the  
10 identification or Correction of a Material Defect may occur during the Punch List process set forth in  
11 Section 9.8) and shall be independent of any obligation owed to a Party under any warranty or guaranty  
12 from an architect or a third-party contractor or supplier.

13           **9.9.4** Promptly after becoming aware of a claim against any Retained Party related to  
14 the Expansion Improvements, Peregrine shall put the Retained Party on written notice of such claim and  
15 shall provide a copy of such notice to the City. The City shall have the right, but not the obligation, to  
16 advise Peregrine in writing of any matters of which the City becomes aware that may constitute a claim  
17 against a Retained Party. Peregrine shall vigorously prosecute all good faith Claims against Retained  
18 Parties promptly after becoming aware of a claim against any Retained Party. The cost of such prosecution  
19 shall be borne solely by Peregrine.

20           **9.9.5** Peregrine shall assign and deliver to the City all Warranties from third-party  
21 contractors and suppliers with respect to the Expansion Improvements. Peregrine shall organize the  
22 Warranties by logical components of the Expansion Improvements; shall index the Warranties to show  
23 the components to which such Warranty applies; shall show the expiration date for each such Warranty;  
24 and shall promptly deliver the same to the City after Substantial Completion of each component of the  
25 Expansion Improvements. Notwithstanding the foregoing, Peregrine shall retain the right to enforce all  
26 Warranties as necessary to perform its obligations under this Section 9.9, and the City shall cooperate in  
27 such enforcement, so long as the same is at no additional expense to the City.

28           **9.9.6** Peregrine shall give the City thirty (30) days prior notice of any training dates  
29 established in connection with the Warranties. The City shall cause its required employees and Peregrine  
30 shall cause its Stadium manager to attend such training. Peregrine shall provide to the City along with the  
31 Warranties in Section 9.9.5, a certificate signed by the Architect or Peregrine's Representative that all the  
32 required training associated with such Warranties has been completed. Each Party shall bear  
33 responsibility for the effect on the Warranties, if any, of failure of any of such Party's employees to attend  
34 such training meetings after due notice of the same.

35 This Section 9.9 shall survive the termination of this Agreement until expiration of the applicable statute  
36 of repose period.

### 37           **9.10 Right-of-Way Encroachment Issues**

38           Peregrine's proposed design for the Expansion includes the construction of a portion of the  
39 Stadium structure in, on and above the public right-of-way along SW 18th Avenue, for approximately 314  
40 feet between SW Yamhill and SW Taylor Streets(the "Encroachment"). Peregrine will obtain all necessary  
41 regulatory and other approvals from the City for the Expansion, including any required approval of a



1 “Major Encroachment” as defined in the City’s Portland Policy Document (TRN-8.01) and of any business  
 2 activity that Peregrine desires to conduct within any Major Encroachment. Except to the extent Peregrine  
 3 obtains an adjustment or waiver to the following requirements from a governmental body with authority  
 4 to grant such adjustment or waiver, Peregrine shall (a) bear any and all costs, including any right-of-way  
 5 leasing fees charged by the City, associated with the Expansion; and (b) perform and pay for all repairs  
 6 and maintenance of the public right-of-way or portion thereof underlying or constituting a portion of the  
 7 Expansion including anything attached to the Stadium such as street lights and catenary. To the extent  
 8 that the City, as owner of the Stadium, is charged for right-of-way leasing fees, for air space leasing fees,  
 9 or incurs any other costs or expenses related to the Encroachment, including any future escalations of  
 10 such costs or expenses, Peregrine shall promptly reimburse the City for such fees, costs, or expenses.

#### 11 **9.11 Roof Warranty**

12 On or before Final Completion, Peregrine shall provide the City with either (a) a warranty for the  
 13 Expansion’s roof that is effective for a minimum of twenty (20) years, or (b) a warranty for the Expansion’s  
 14 roof that is effective for less than twenty (20) years and a guarantee from Peregrine to repair the roof at  
 15 Peregrine’s expense during the time period after the expiration of such less-than-20-year warranty until  
 16 twenty (20) years after Final Completion. This Section 9.11 shall survive the termination of this Agreement  
 17 for the period of twenty (20) years after Final Completion at which time this Section 9.11 shall terminate  
 18 and cease to have any effect.

#### 19 **9.12 Timing of Construction; Financing**

20 Peregrine has provided the City with evidence that it has obtained a line of credit from JPMorgan  
 21 Chase Bank, N.A. in the amount of \$70 million (the “LOC”). Peregrine represents and warrants to the City  
 22 that \$60 million of the LOC is and shall remain solely dedicated to and used for costs and expenses  
 23 associated with designing and constructing the Expansion. The LOC is effective through September 30,  
 24 2019. Peregrine shall renew the LOC as necessary to maintain the effectiveness of the LOC through the  
 25 Final Completion. The City agrees that the LOC is reasonable evidence that Peregrine has obtained all  
 26 financing and funds necessary to complete and pay the cost of the Expansion through September 30,  
 27 2019. If Final Completion will not occur by September 30, 2019, then Peregrine shall provide the City with  
 28 written evidence that the effective period of the LOC has been extended through the Final Completion  
 29 date or that funding acceptable to the City in its reasonable discretion has otherwise been committed to  
 30 complete the Expansion at least thirty (30) days prior to September 30, 2019.

### 31 **SECTION 10 EXPANSION SCHEDULE, TIME OF COMPLETION**

#### 32 **10.1 Expansion Schedule**

33 The projected construction schedule for the Expansion is attached as Exhibit 10.1 (the “Expansion  
 34 Schedule”).

35 **10.1.1** Peregrine shall achieve Final Completion of the Expansion Improvements by  
 36 December 31, 2022 (the “Final Completion Date”), subject to Excused Delays.

37 **10.1.2** Additionally, Peregrine will manage the construction of the Expansion to  
 38 minimize the number of Timbers and Thorns home games and any other Event, as defined in the Operating

1 Agreement, that will not be played at the Stadium during any MLS or NWSL season in which construction  
2 occurs.

### 3 10.2 Changes In Final Completion Date

4 Any change to the Final Completion Date shall require the City's prior written consent, except for:

5 10.2.1 Changes in the Final Completion Date to which the Contractor is entitled under  
6 the General Construction Contract;

7 10.2.2 Changes based on City-approved Change Orders; or

8 10.2.3 Changes due to the City's breach of this Agreement.

### 9 10.3 Avoidance of Delays

10 Peregrine and the City shall use Reasonable Efforts to avoid any delay in the Substantial Completion and  
11 Final Completion of the Expansion Improvements. Peregrine shall promptly advise the City of any facts or  
12 circumstances that may give rise to a delay in the Substantial Completion of the Expansion Improvements  
13 compared to the then approved Expansion Schedule. The Expansion Schedule may be adjusted by  
14 Peregrine from time to time by written notice to City detailing any changes. If there is a material change  
15 in the Expansion Schedule, Peregrine shall provide the City with a description of how Peregrine will  
16 nevertheless achieve Final Completion of the Expansion Improvements by the Final Completion Date. In  
17 the event of such anticipated delay, the City, Peregrine, and the Contractor shall meet to explore ways to  
18 change the sequencing of the work, or other actions which might be taken to avoid the anticipated delay  
19 in Substantial Completion or delay of the Final Completion Date. The City shall not be required to approve  
20 a Change Order as a means to avoid the anticipated delay. The General Construction Contract will contain  
21 provisions consistent with the provisions of this Section 10.3.

## 22 **SECTION 11** CONSTRUCTION DISPUTE RESOLUTION

### 23 11.1 When Applicable

24 11.1.1 The Dispute Resolution process is hereby established for the resolution of any  
25 disputes and claims arising out of or relating to the design and construction of the Expansion  
26 Improvements and for other designated disputes referred to in this Agreement (a "Dispute" or  
27 "Disputes"). Dispute Resolution shall be the complete, final, and binding means (except as provided in  
28 Section 11.6) for resolving Disputes referred to in the preceding sentence or where this Agreement  
29 expressly provides that a matter is subject to Dispute Resolution. Dispute Resolution shall consist of the  
30 processes set forth in this Section 11, including mediation by a single mediator followed by arbitration by  
31 a single arbitrator (the "Dispute Resolver") in accordance with the terms of this Section 11.1; provided,  
32 however, that for disputes involving the Contractor, the Architect, or the Expansion Manager, mediation  
33 will not be required prior to arbitration. The Dispute Resolver will provide special expertise to assist in,  
34 facilitate, and, if required, arbitrate the timely and equitable resolution of Disputes between Peregrine  
35 and the City, in an effort to avoid construction delay and litigation.

36 11.1.2 If a Dispute also involves a dispute by or against one or more Retained Parties,  
37 Peregrine shall promptly give notice to the City of any binding dispute resolution procedure under the  
38 contract with the Retained Party involved in the dispute ("Related Dispute Resolution"), and the City shall

1 have the opportunity to participate in the Related Dispute Resolution as a party. Any factual or legal  
2 determinations established in the Related Dispute Resolution shall be binding upon Peregrine and the City  
3 (if the City received sufficient prior written notice of the Related Dispute Resolution proceeding to  
4 participate in the same) in any subsequent proceeding provided for under this Agreement. The City further  
5 agrees to cooperate, to the extent reasonably requested by Peregrine, in connection with any dispute  
6 subjected to any Related Dispute Resolution or any executive resolution procedure provided for in  
7 contracts with a Related Party.

## 8 **11.2 Resolution of Disputes Encouraged**

9 **11.2.1** It is not intended that Dispute Resolution be a substitute for the Parties amicably  
10 and reasonably resolving their differences. It is intended that the Dispute Resolution will encourage  
11 Peregrine and the City to resolve potential disputes without resorting to this procedure. It is intended that  
12 Disputes will be resolved promptly, with minimum expense, and with minimum disruption to the  
13 administration and performance of the design and construction of the Expansion Improvements.  
14 Accordingly, in the event of a Dispute, the City's Construction Representative and Peregrine's Construction  
15 Representative shall meet to attempt to resolve the matter if either party requests such a meeting. The  
16 City's Construction Representative and Peregrine's Construction Representative shall meet over a period  
17 of ten (10) Business Days and shall work diligently and in good faith to try to resolve the Dispute.

18 **11.2.2** If the Dispute cannot be resolved by the Authorized Parties it shall be referred to  
19 Mike Golub for Peregrine and to the City's CAO for the City, who also shall have the authority to resolve  
20 the Dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after  
21 having had a sufficient time to review information related to the Dispute, which time period shall not  
22 exceed thirty (30) days.

23 **11.2.3** If the Parties are unable to resolve the Dispute in accordance with Sections 11.2.1  
24 and 11.2.2, the Dispute will be submitted to mediation. The mediator shall be chosen by mutual  
25 agreement of the Parties within ten (10) days of the last meeting held under Section 11.2.2 based on the  
26 criteria set forth in Section 11.3. If the Parties cannot agree upon a mediator, then the Dispute will be  
27 presented to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation  
28 fee shall be borne equally by the City and Peregrine.

29 **11.2.4** If the Dispute is not resolved by mediation, the City and Peregrine agree to  
30 resolve the dispute by arbitration with Arbitration Service of Portland, Inc. ("ASP") and in accordance with  
31 ASP's procedures. Peregrine shall pay the arbitration fee required to initiate the arbitration, which shall  
32 be a cost of the arbitration.

33 **11.2.4.1** The City and Peregrine shall agree upon the appointment of an  
34 arbitrator with qualifications set forth in Section 11.3 for a Dispute Resolver. In the event of disagreement,  
35 each Party shall appoint one arbitrator within ten (10) Business Days of the decision to arbitrate. The two  
36 arbitrators selected by the Parties will appoint a third arbitrator to act as the sole arbitrator.

37 **11.2.4.2** The decision of the arbitrator shall be final, binding, and  
38 conclusive upon the Parties and subject to appeal only on those grounds for which arbitrations in Oregon  
39 are subject to appeal and may be confirmed or embodied in an order or judgment of any court having  
40 jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award



1 consequential or punitive damages and shall not have the power to rescind this Agreement, but may  
2 award attorneys' fees and costs of arbitration.

3 **11.2.5** If the Dispute is not arbitrated and remains unresolved, either Party may pursue  
4 resolution through litigation.

5 **11.3 Dispute Resolver**

6 **11.3.1** Peregrine and the City shall mutually establish with the Dispute Resolver the  
7 retainer and hourly charge payable to him or her and any reimbursable costs. The fees and costs of the  
8 Dispute Resolver shall be split by the Parties unless, in arbitration, the arbitrator awards costs.

9 **11.3.2** The Dispute Resolver shall have at least five (5) years of experience with the type  
10 of construction involved in the Expansion and with comparable experience in the interpretation of  
11 construction contract documents. Additional criteria and limitations for the Dispute Resolver shall be as  
12 follows:

13 **11.3.2.1** No such person shall have an ownership interest in any Party (or  
14 Affiliate) to this Agreement, the Architect, the Contractor, any Retained Parties or a direct or indirect  
15 financial interest in this Agreement, except for payment for services as the Dispute Resolver.

16 **11.3.2.2** No such person shall have been employed by or retained by  
17 Peregrine (or any Affiliate), the City, the Architect or the Contractor within a period of two (2) years prior  
18 to the Effective Date other than persons previously retained as mediators or arbitrators.

19 **11.3.2.3** No such person shall have had prior involvement in the Expansion  
20 of a nature which could compromise the person's ability to resolve disputes impartially.

21 **11.3.2.4** No such person shall be employed by any Party (or Affiliate) to  
22 this Agreement or by the Architect or the Contractor while the Dispute is pending.

23 **11.3.2.5** No discussion or agreement shall be made between any Dispute  
24 Resolver and any party to this Agreement or the Contractor or the Architect for employment.

25 **11.3.3** In case the Dispute Resolver needs to be or is to be replaced, the replacement  
26 Dispute Resolver will be jointly selected by the Parties or, if they cannot agree, then by the Presiding Judge  
27 of Multnomah County, Oregon. The appointment of a replacement Dispute Resolver will begin promptly  
28 upon determination of the need for replacement and shall be completed within thirty (30) days thereafter.

29 **11.3.4** Service of a Dispute Resolver may be terminated at any time with no less than  
30 thirty (30) days' notice as follows:

31 **11.3.4.1** Upon failure of the Dispute Resolver to perform the duties of the  
32 Dispute Resolver under this Agreement, other than for reasonable cause;

33 **11.3.4.2** By mutual agreement of the City and Peregrine; or

34 **11.3.4.3** By death, disability, or resignation of the Dispute Resolver.

1                           **11.3.4.4**           No appointed Dispute Resolver may be terminated at such time  
2 as may materially disrupt an on-going Dispute Resolution, unless Peregrine and the City otherwise agree.

3                   **11.4    Operation of Dispute Resolver**

4           In connection with Disputes, the Dispute Resolver shall visit the Expansion Site when reasonably  
5 requested by Peregrine or the City and meet with representatives of Peregrine, the City, the Contractor,  
6 and such Retained Parties as the City or Peregrine may designate. The frequency of these visits shall be as  
7 agreed by Peregrine, the City, and the Dispute Resolver, depending on the progress of the work. Any field  
8 inspection may cover all segments of the work. During these visits or at any other time, neither the City  
9 nor Peregrine shall seek the Dispute Resolver's advice or opinion on a pending or anticipated Dispute. It  
10 is anticipated that the Dispute Resolver shall be contacted only in connection with Disputes, and that the  
11 Dispute Resolver need not devote time or attention to the Expansion except as necessary for the  
12 resolution of Disputes.

13                   **11.5    Procedure and Schedule for Dispute Resolution**

14                   **11.5.1** The Dispute Resolver shall consider Disputes submitted to him or her as quickly  
15 as possible, taking into consideration the particular circumstances, including any urgency caused by the  
16 need to avoid any delays in the work or the need to remove or correct promptly any work performed in  
17 error, and the time required to prepare detailed documentation.

18                   **11.5.2** A Party submitting a Dispute to the Dispute Resolver shall submit the matter in  
19 writing to the Dispute Resolver and the other Party and shall include documents and other information  
20 the Party believes is necessary to substantiate its position.

21                   **11.5.3** When a Dispute is submitted to the Dispute Resolver, the Dispute Resolver shall  
22 decide when to hold mediation meetings or the arbitration, as applicable. For an urgent matter, based on  
23 the opinion of the Party submitting the matter, unless the Dispute Resolver determines otherwise, the  
24 Dispute Resolver shall hold the arbitration or mediation at his or her earliest convenience, but in no event  
25 later than ten (10) Business Days after submission of the Dispute to the Dispute Resolver.

26                   **11.5.4** Peregrine and the City shall each be notified of the date, time, and place for  
27 hearing or meeting at the same time and at least two (2) Business Days in advance (except adjourned  
28 hearings shall be as announced at the hearing) and be afforded an opportunity to be heard by the Dispute  
29 Resolver and to offer evidence. All hearings shall be conducted in the City of Portland.

30                   **11.5.5** In any Dispute, the City and Peregrine shall have full access to each other's books  
31 and records relating to the Expansion only and the right to make copies to be used in such Dispute  
32 Resolution.

33                   **11.5.6** Procedures for the conduct of hearings shall be as established by the Dispute  
34 Resolver, and, unless the Dispute Resolver determines otherwise, shall generally follow ASP's rules. The  
35 Dispute Resolver's determinations or resolution of the Dispute and any awards based thereon will be  
36 given in writing to Peregrine and the City within five (5) days of completion of the hearing, and shall be  
37 final and conclusive and binding on the Parties and judgment may be entered upon such determinations,  
38 resolutions<sup>1</sup> and awards in accordance with applicable Laws in a court of competent jurisdiction.

1           **11.5.7** For purposes of arbitration, the terms and provisions of this Section 11.5 shall  
2 only apply to the extent such terms and provisions are consistent with the method of arbitration selected  
3 by the Parties (or chosen by default if the Parties cannot agree).

#### 4           **11.6 Equitable Proceeding**

5           If a Party desires to seek interim relief, whether affirmative or prohibitive, in the form of a  
6 temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a  
7 Dispute, either before or after the initiation of Dispute Resolution, that Party may initiate the legal  
8 proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this Section 11.6 shall be  
9 construed to suspend or terminate the obligation of the Parties to comply with the procedures set forth  
10 in this Section 11 with respect to the Dispute that is the subject of such Equitable Proceeding during the  
11 pendency of any such Equitable Proceeding, including any appeal or review. Notwithstanding the  
12 determination of the Dispute Resolver, any interim relief granted by such Equitable Proceeding shall not  
13 be reversed or modified by the Dispute Resolver's determination, and any factual or legal determinations  
14 made in the permanent injunction stage of such Equitable Proceeding shall be binding upon the Parties in  
15 the Dispute before the Dispute Resolver.

#### 16           **11.7 Compensation**

17           Except as set forth in Section 11.2.4, all fees and expenses of the Dispute Resolver and any  
18 reimbursable expenses shall be shared equally by Peregrine and the City. All costs and expenses incurred  
19 by Peregrine and the City in connection with any Dispute before the Dispute Resolver, including  
20 consultants' and attorneys' fees shall be borne by the City and Peregrine equally.

21 This Section 11 shall survive the termination of this Agreement.

### 22   **SECTION 12**   **REPRESENTATIONS AND WARRANTIES**

#### 23           **12.1 City Representations and Warranties**

24           Subject to the qualifications and indemnifications set forth in Exhibit 12.1 entitled "Qualifications  
25 and Indemnifications Relating to City's Representations and Warranties," and the other qualifications set  
26 forth in this Agreement, as of the Effective Date, the City represents and warrants to Peregrine the  
27 following:

28           **12.1.1** The City is a municipal corporation duly organized and validly existing under the  
29 laws of the State of Oregon, and has full requisite municipal power and authority to execute, enter into  
30 and deliver this Agreement and each of the Related Agreements to which it is a party, and to perform its  
31 obligations under this Agreement, subject to any disclaimers or qualifications set forth in this Agreement  
32 and each of the Related Agreements to which it is a party.

33           **12.1.2** The execution, delivery, and performance of this Agreement by the City and each  
34 of the Related Agreements to which it is a party and the consummation of the transactions contemplated  
35 in this Agreement have been duly authorized by all necessary municipal action on the part of the City. The  
36 Mayor and Auditor of the City are the persons duly authorized to execute this Agreement on behalf of the  
37 City and have so executed this Agreement. No further consent, approval, or other authorization of or by  
38 any court, administrative agency, or other governmental authority is required in connection with the



1 execution, delivery, and performance of this Agreement by the City and the consummation of the  
2 transactions contemplated in this Agreement.

3 **12.1.3** This Agreement is, when duly executed and delivered by the City and by  
4 Peregrine, the legal, valid, and binding obligation of the City, fully enforceable in accordance with its  
5 respective terms, subject to any disclaimers or qualifications in this Agreement. The validity and  
6 enforceability of this Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium,  
7 or other similar laws affecting creditors' rights generally, and by equitable principles governing specific  
8 performance, injunctive relief, and other applicable remedies.

9 **12.1.4** Except as set forth in Exhibit 12.1, neither the execution, delivery, nor  
10 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts with, or would  
11 constitute a default under or with respect to, the City Charter or any other organizational or organic  
12 documents of the City, any applicable law, regulation, rule, code, ordinance, policy or resolution of the  
13 City or of any other jurisdiction which is binding on the City; or any judgment, order, writ, injunction, or  
14 decree of any court, administrative agency, or other governmental authority to which it is party or  
15 otherwise subject which is in any respect material to the transactions contemplated in this Agreement,  
16 subject to any disclaimers or qualifications in this Agreement.

17 **12.1.5** Except as set forth in Exhibit 12.1, neither the execution, delivery, nor  
18 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts with, will  
19 constitute a default under or with respect to, any other agreements, instruments, judgments or decrees  
20 to which the City is a party or is otherwise subject.

21 **12.1.6** Except as set forth in Exhibit 12.1, to the City's actual knowledge, based on the  
22 actual knowledge of the City Attorney, any member of the City Council, or the director or commissioner  
23 or other head of the following City Bureaus or Commissions: Bureau of Development Services, Bureau of  
24 Planning and Sustainability, Office of Management and Finance, no suit, litigation, arbitration or other  
25 proceeding is pending before or by any court, administrative agency, or other governmental authority, or  
26 threatened, against the City or to which the City is or would become a party, seeking to restrain or prohibit,  
27 or seeking damages or other relief in connection with, the execution and delivery of this Agreement or  
28 the consummation of the transactions contemplated in this Agreement, which might materially and  
29 adversely affect the use and operation of the Expansion as contemplated by this Agreement, or which  
30 might adversely affect in any way the validity, execution, delivery, or performance of any of this  
31 Agreement by the City.

32 **12.1.7** Except as described in Exhibit 12.1, to the City's actual knowledge, based on the  
33 actual knowledge of the City Attorney, any member of the City Council, or the director, commissioner, or  
34 other head of the following City Bureaus or Commissions: Bureau of Development Services, Bureau of  
35 Planning and Sustainability, Office of Management and Finance, the City has not received notice that the  
36 Stadium is currently in violation of any Laws or judicial or administrative decisions pertaining to historic  
37 preservation, industrial health matters, or safety matters, but excluding Environmental Laws.

38 **12.1.8** Subject to the Permitted Exceptions, the City owns the Stadium (other than the  
39 MAC Parcel) in fee simple, free and clear of any liens, claims or encumbrances which are or would be  
40 senior to or which might otherwise adversely affect Peregrine's interest in or use or operation of the  
41 Stadium as contemplated by this Agreement.

1           **12.2 Peregrine Representations and Warranties**

2           Subject to the qualifications in paragraphs 1 and 6 of Exhibit 12.1, as of the Effective Date of this  
3 Agreement, Peregrine represents and warrants to the City the following:

4           **12.2.1** Peregrine is a limited liability company duly organized and validly existing under  
5 the laws of the State of Delaware (and qualified to conduct business in the State of Oregon), and has full  
6 requisite power and authority to execute, enter into and deliver this Agreement and each of the Related  
7 Agreements to which it is a party, and to perform its obligations under this Agreement and each of the  
8 Related Agreements to which it is a party.

9           **12.2.2** The execution, delivery, and performance of this Agreement by Peregrine and the  
10 Related Agreements to which it is a party and the consummation of the transactions contemplated in this  
11 Agreement have been duly authorized by all necessary action on the part of Peregrine. The undersigned  
12 manager of Peregrine is duly authorized to execute this Agreement on behalf of Peregrine, a manager of  
13 Peregrine has so executed this Agreement, and no further consent, approval, or other authorization is  
14 required in connection with the execution, delivery, and performance of this Agreement and the Related  
15 Agreements, by Peregrine and the consummation of the transactions contemplated in this Agreement by  
16 Peregrine.

17           **12.2.3** This Agreement and each of the Related Agreements to which Peregrine is a party  
18 is, when duly executed and delivered by Peregrine and the City, the legal, valid, and binding obligation of  
19 Peregrine, fully enforceable in accordance with their respective terms. The validity and enforceability of  
20 this Agreement and each of the Related Agreements to which Peregrine is a party may be limited by  
21 bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights  
22 generally, and equitable principles governing specific performance, injunctive relief, and other applicable  
23 remedies.

24           **12.2.4** Neither the execution, delivery, nor performance of this Agreement or any of the  
25 Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with, or would  
26 constitute a default under or with respect to (a) Peregrine's operating agreement or (b) any judgment,  
27 order, writ, injunction, or decree of any court, administrative agency, or other governmental authority to  
28 which it is party or otherwise subject to which is in any respect material to the transactions contemplated  
29 in this Agreement.

30           **12.2.5** Peregrine is in compliance in all material respects with all Laws and is in  
31 compliance with all Laws with respect to the transactions contemplated in and by this Agreement and the  
32 Related Agreements.

33           **12.2.6** Neither the execution, delivery, nor performance of this Agreement or any of the  
34 Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with, or will constitute  
35 a default under or with respect to any other agreements, instruments, judgments or decrees to which  
36 Peregrine is a party or is otherwise subject.

37           **12.2.7** To the best of Peregrine's actual knowledge, based on the actual knowledge of  
38 its managers, no suit, litigation, arbitration or other proceeding is pending before or by any court,  
39 administrative agency or other governmental authority, or threatened against Peregrine or to which  
40 Peregrine is or would become a party, seeking to restrain or prohibit, or seeking damages or other relief  
41 in connection with, the execution and delivery of this Agreement or any of the Related Agreements, or

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1 the consummation of the transactions contemplated thereby, which might materially and adversely affect  
 2 the use and operation of the Expansion as contemplated by this Agreement and the Related Agreements,  
 3 or which might adversely affect in any way the validity, execution, delivery or performance of any of the  
 4 Agreement or Related Agreements by Peregrine.

5 The representations and warranties contained in Sections 12.1 and 12.2 shall survive the termination of  
 6 this Agreement.

### 7 **12.3 Disclaimers Regarding Physical Condition**

8 Except for any express representations, obligations, and covenants of the City set forth in this  
 9 Agreement, Peregrine accepts the Stadium in its "AS IS" condition. The City makes no warranties or  
 10 representations as to the suitability of the soil or other physical conditions or any other conditions of the  
 11 Expansion Site or the Stadium for the Expansion Improvements or for Peregrine's intended use of the  
 12 Stadium, and Peregrine agrees that it and its affiliated entities have operated the Stadium since June 1,  
 13 2007, that it has not relied on any representations or warranties, if any, made by the City as to the  
 14 environmental condition of the Expansion Site or the Stadium, the suitability of the soil conditions at the  
 15 Expansion Site, or any of the conditions of the Stadium. Peregrine agrees that the City will not be liable  
 16 for any loss, cost, or damage which may be caused or incurred by Peregrine by reason of any such soil,  
 17 environmental, or other physical conditions of the Expansion Site or the Stadium, except if provided in  
 18 Section 6. Nothing in this Section 12.3 shall relieve the City of its ongoing obligations under the Stadium  
 19 Operating Agreement. This Section 12.3 shall survive the termination of this Agreement.

## 20 **SECTION 13 INSURANCE DURING CONSTRUCTION**

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

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

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

### 33 **13.1 Insurance to be Carried by Peregrine**

34 Peregrine must maintain all of the insurance required by this Section 13.1 in full force and effect;  
 35 provided, however, that Peregrine may coordinate with the Contractor to have the Contractor, rather  
 36 than Peregrine, procure and maintain the Wrap policy and the Builder's Risk insurance required by Section  
 37 13.3.5 so as to avoid duplication of coverages. The wrap policy shall contain tail coverage until the  
 38 expiration of the statute of repose for construction defects, unless another time period is expressly  
 39 provided in this Section 13. The premiums and deductibles for all insurance required by this Section 13.1



1 are to be paid by Peregrine (or by the Contractor or its Subcontractors), and the tail coverage required by  
 2 this Section 13.1 shall survive the termination of this Agreement until the expiration of the applicable  
 3 period of statute of repose at which time this Section 13.1 shall terminate and cease to have any effect.

4 This Section 13.1 shall not limit in any way the extent to which Peregrine may be held responsible  
 5 for the payment of damages to persons or property resulting from Peregrine's activities, the activities of  
 6 its invitees, employees, licensees, agents, or independent contractors, or the activities of any other person  
 7 or persons for whom Peregrine otherwise is legally responsible. If Peregrine obtains insurance policies in  
 8 addition to the policies referred to in this Section 13, such policies shall provide that such additional  
 9 policies or coverages will not diminish the coverage required by this Section 13. Peregrine shall provide  
 10 the City with a copy of such additional policy or coverage confirming the above.

#### 11 **13.1.1 Delayed Opening Insurance**

12 Peregrine will not be required to obtain Delayed Opening Insurance.

#### 13 **13.1.2 Commercial General Liability**

14 Peregrine shall cause Contractor to maintain Commercial General Liability insurance ("CGL") as  
 15 part of the Wrap, on an Insurance Services Office ("ISO") form, insuring Peregrine as a named insured,  
 16 until Substantial Completion of the Project and completion of all punch list items, with minimum limits of  
 17 not less than \$2,000,000 per occurrence and \$4,000,000 in the general aggregate. The Commercial  
 18 General Liability insurance shall contain no exclusions other than those noted on the standard ISO form  
 19 and those that are not objectionable to the City in its sole discretion, shall specifically include Contingent  
 20 Liability/Independent Contractor coverage, and shall contain the following specific limits of liability and  
 21 be subject to the following provisions:

22 **13.1.2.1** Personal and Advertising Injury liability limits of not less than  
 23 \$2,000,000 per occurrence.

24 **13.1.2.2** Products and Completed Operations liability limits of not less  
 25 than \$4,000,000 in the aggregate.

26 **13.1.2.3** The Commercial General Liability Policy shall be endorsed to list  
 27 "the City and its bureaus, officers, agents, and employees" as additional insureds with respect to liability  
 28 and defense of suits arising out of the activities performed by, or on behalf of, Peregrine, including not  
 29 only ongoing operations but also completed operations on the ISO form 2010 or CG 2037 form (2004  
 30 edition or equivalent).

31 **13.1.2.4** The Commercial General Liability policy shall also have a per  
 32 project aggregate endorsement.

#### 33 **13.1.3 Umbrella Insurance**

34 Peregrine shall cause Contractor to maintain an Umbrella Policy as part of the Wrap policy with  
 35 liability limits of \$200,000,000 that shall be excess over the CGL and Employers' Liability.

#### 36 **13.1.4 Automobile Liability**

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

#### 4 **13.1.5 Workers' Compensation**

5 Peregrine shall secure and maintain workers' compensation insurance complying with the  
6 statutory limits of the State of Oregon to insure all persons or entities employed by Peregrine and shall  
7 provide employer's liability coverage, including broad form all states protection, if applicable, voluntary  
8 compensation, and Federal endorsement. The employer's liability coverage shall have the following limits:  
9 (a) Bodily Injury by Accident: \$1,000,000 each accident; (b) Bodily Injury by Disease \$1,000,000 each  
10 employee; and (c) Bodily Injury by Disease: \$1,000,000 policy limit. The costs of such insurance shall be  
11 paid by Peregrine.

#### 12 **13.2 Professional Liability Insurance to be Carried by Design Professionals**

13 Peregrine shall cause its Architect and any Retained Parties that are design professionals to  
14 maintain professional liability insurance, on a primary basis, covering wrongful acts, errors and/or  
15 omissions (including design errors, if applicable) for damage arising from professional services in an  
16 amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate. Peregrine shall require and  
17 cause the Architect and any Retained Parties that are design professionals to maintain the Professional  
18 Liability policy until the expiration of the statute of repose for design and construction defects with an  
19 effective date that is retroactive to the date of the initial policy. This Section 13.2 shall survive the  
20 termination of this Agreement until the expiration of the applicable period of statute of repose at which  
21 time this Section 13.2 shall terminate and cease to have any effect.

#### 22 **13.3 Insurance to be Carried by the Contractor**

##### 23 **13.3.1 General**

24 The Contractor shall maintain all the insurance required of Retained Parties under Section 13.4  
25 below, as such requirements may be increased or supplemented by this Section 13.3. Peregrine shall  
26 cause the Contractor to name all Subcontractors as insureds under its Wrap policies or, in the alternative,  
27 to cause each Subcontractor to maintain separate insurance as determined by the Contractor, provided  
28 that each Subcontractor's limits of Commercial General Liability shall not be less than \$2,000,000 per  
29 occurrence and \$2,000,000 in the aggregate.

##### 30 **13.3.2 TRIA**

31 The Contractor's coverage shall include Terrorism Risk Insurance Act (TRIA) coverage.

##### 32 **13.3.3 Umbrella Policy**

33 Contractor shall maintain the Umbrella Policy required by Section 13.1.3, which policy shall be  
34 over and above the general liability and employer's liability policies. This coverage must be kept in effect  
35 until the expiration of the statute of repose for design and construction defects. This Section 13.3.3 shall  
36 survive the termination of this Agreement until the expiration of the applicable period of statute of repose  
37 at which time this Section 13.3.3 shall terminate and cease to have effect.

**13.3.4 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.

**13.3.5 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 13, 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.

**13.3.5.1** 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.

**13.3.5.2** 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.

**13.3.5.3** 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.

**13.3.5.4 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



1 power to adjust and settle the City's loss with insurers. It is expressly agreed that nothing in this section  
2 shall be subjected to arbitration and any references to arbitration are expressly deleted.

### 3 13.4 Insurance Required to be Carried by Retained Parties (Including the Contractor)

4 All Retained Party Contracts shall contain clauses requiring the Retained Party to maintain in force  
5 each of the insurance coverages in this Section 13.4 during the term of the Retained Party Contract and  
6 for such additional time as indicated below:

#### 7 13.4.1 General Provisions:

8 13.4.1.1 The Retained Party shall maintain at least the minimum  
9 insurance coverage described in this Section 13.4 and maintain that coverage until Final Completion of  
10 the Project. By requiring such minimum insurance, the City does not guarantee that the insurance is  
11 sufficient to cover all the risks the Retained Party may face. Instead, the Retained Party should assess its  
12 own risks and, if it deems it appropriate and prudent, maintain higher limits, broader coverages, or both,  
13 than the coverage required by the City. The Retained Party is not relieved of any liabilities if it fails to  
14 obtain and maintain the minimum insurance required. The insurance carried by the Retained Party shall  
15 be the primary coverage and non-contributory, and any insurance maintained by the City is excess and  
16 solely for damages or losses for which the City is responsible.

17 13.4.1.2 All deductibles and premiums are the responsibility of the  
18 Contractor or a Retained Party.

19 13.4.1.3 The Retained Party Contract amount must include the cost of any  
20 insurance required by this Section 13.4. The Retained Party is not entitled to additional compensation  
21 because it misunderstood what insurance coverage was required. Any confusion regarding what coverage  
22 is required should be brought to the City's attention prior to execution of a Retained Party Contract.

23 13.4.1.4 The City may, but is not required to, obtain insurance it deems  
24 prudent under the circumstances if it discovers that the insurance required by the Retained Party Contract  
25 has not been obtained or, for whatever reason, is no longer in effect. If so, the City may recover the cost  
26 of obtaining that insurance from Peregrine and may offset such costs against any sums due, or that  
27 become due, to Peregrine under this Agreement or any other agreement.

#### 28 13.4.2 Workers' Compensation:

29 13.4.2.1 The Retained Party shall secure and maintain, and require all  
30 Subcontractors to secure and maintain, workers' compensation insurance complying with the statutory  
31 limits of the State of Oregon in accordance with ORS Chapter 656, either as: (a) a carrier-insured employer;  
32 or (b) self-insured employer.

33 13.4.2.2 Such worker's compensation insurance shall insure all persons or  
34 entities employed in performing services under the Retained Party Contract and shall provide employer's  
35 liability coverage, including broad form all states protection, if applicable, voluntary compensation, and  
36 Federal endorsement. The employer's liability coverage shall have the following limits: (a) Bodily Injury by  
37 Accident: \$1,000,000 each accident; (b) Bodily Injury by Disease \$1,000,000 each employee; and (c) Bodily  
38 Injury by Disease: \$1,000,000 policy limit.

1                   **13.4.2.3**       The Retained Party shall require proof of such Workers'  
2 Compensation Insurance by receiving and keeping on file a certificate of insurance from each  
3 Subcontractor or anyone else directly employed by either the Retained Party or its Subcontractors.

4                   **13.4.3 Commercial General Liability (CGL)**

5                   **13.4.3.1**       The Retained Party shall be an insured on the Wrap or obtain, at  
6 Retained Party's expense, and keep in effect during the term of the Retained Party Contract and for such  
7 longer period as specified below, CGL Insurance on a standard ISO occurrence form, with minimum limits  
8 of not less than \$2,000,000 per occurrence and \$2,000,000 in the general aggregate. The Commercial  
9 General Liability insurance shall contain no exclusions other than those noted on the standard ISO form  
10 and those that are not objectionable to the City in its sole discretion, shall specifically include Contingent  
11 Liability/Independent Contractor coverage, and shall contain the following specific limits of liability and  
12 be subject to the following provisions:

13                   **13.4.3.2**       Personal and Advertising Injury liability limits of not less than  
14 \$2,000,000 per occurrence.

15                   **13.4.3.3**       Products and Completed Operations liability limits of not less  
16 than \$2,000,000 in the aggregate.

17                   **13.4.3.4**       The CGL coverage required by this Agreement must be kept in  
18 effect until the expiration of the statute of repose for design and construction defects.

19                   **13.4.4 Automobile Liability**

20                   **13.4.4.1**       The Retained Party shall obtain, at Retained Party's expense, and  
21 keep in effect during the term of the Retained Party Contract, Automobile Liability Insurance covering  
22 owned, non-owned and hired vehicles. This coverage may be combined with the Commercial General  
23 Liability Insurance policy. The combined single limit per occurrence shall not be less than \$2,000,000.  
24 Endorsements CA9948 and MCS-90 are required if the Retained Party is transporting any type of  
25 hazardous materials. This policy must be kept in effect for two (2) years after completion of the project.

26                   **13.5 Insurance Requirements Applicable to Peregrine and All Retained Party Contracts**

27                   **13.5.1**       The premiums and deductibles for all insurance required by this Section 13 are to  
28 be paid by Peregrine or its Retained Parties, as applicable.

29                   **13.5.2**       All required insurance (excepting workers' compensation and the umbrella policy  
30 required by Section 23.1.3) shall be primary coverage and non-contributory with regard to insurance  
31 maintained by the City and shall be for the benefit of the City and except for workers' compensation,  
32 Builder's Risk, pollution and professional liability, shall list "the City and its bureaus, officers, agents, and  
33 employees" as additional insureds with respect to liability and defense of suits arising out of the activities  
34 performed by, or on behalf of, Peregrine, including not only ongoing operations but also completed  
35 operations on the ISO form 2010 or CG 2037 form (2004 edition or equivalent).

36                   **13.5.2.1**       The "additional insured" requirement shall also apply to  
37 Products/Completion Operations coverage. If for any reason Retained Party cannot obtain such coverage  
38 from its insurer, it shall obtain at Retained Party's expense, and keep in effect during the term of the

1 Retained Party Contract, Owners and Contractors Protective Liability Insurance, including  
2 Products/Completed Operations coverage for up to 24 months after Final Completion, naming the City of  
3 Portland, its officers, employees and agents as Named Insured with not less than a \$2,000,000 limit per  
4 occurrence, \$2,000,000 Products/Completed Operations Aggregate and \$2,000,000 general aggregate.  
5 This policy must be keep in effect for 24 months following Final Completion.

6 **13.5.3** All required insurance shall be obtained from a financially sound insurance  
7 company, rated not less than A- in Best's Rating Guide, authorized to do business in the State of Oregon.

8 **13.5.4** The Builder's Risk policy shall provide that the waiver of recovery (subrogation)  
9 provided in Section 23.6 shall not invalidate or have any adverse effect on the liability of the insurer.

10 **13.5.5** All required insurance shall provide that such policies or certificates shall not be  
11 canceled without prior written notice to the City's Spectator Venues Program Manager. Insurance  
12 certificates shall contain a provision that states substantially the following: "The insurance described in  
13 this certificate shall not be canceled or materially altered without giving the City's Spectator Venues  
14 Program Manager sixty (60) days written notice in advance of that action, except for cancellation due to  
15 non-payment of premiums, in which case at least ten (10) Business Days prior written notice must be  
16 given to the City's Spectator Venues Program Manager." In addition, there shall be no cancellation, non-  
17 renewal, material change, or potential exhaustion of aggregate limits without thirty (30) days written  
18 notice from the Retained Party, Peregrine, or the insurer(s) to the City's Spectator Venues Program  
19 Manager. To the extent certificates of insurance contain words to the effect that Peregrine or the Retained  
20 Party shall "endeavor to send notice of cancellation" or similar language, Peregrine or the Retained Party  
21 shall require its insurer(s) to send such notice by making sure that the words "endeavor to" or similar  
22 words are removed from the certificate.

23 **13.5.6** Peregrine and all Retained Parties shall provide the City's Spectator Venues  
24 Program Manager with certificates of insurance and additional insured endorsements signed by the  
25 companies issuing such policies evidencing all coverage required by this Agreement using ISO form  
26 numbers to identify the specific coverage that has been obtained and the effective dates of the insurance  
27 policies. The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees and  
28 will reflect the other requirements of this Section 13. For Retained Parties, such documentation shall be  
29 provided to the City Spectator Venues Program Manager before performance by a Retained Party of any  
30 Work on the Project. Failure to comply with the reporting provisions of the Retained Party Contract shall  
31 not affect the coverages provided to the City of Portland and its officers, employees and agents. For  
32 Peregrine, such documentation shall be provided to the City Spectator Venues Program Manager prior to  
33 the commencement of construction of the Project. Thereafter, Peregrine and all Retained Parties shall  
34 provide the City with an opportunity to review such policies (including the declarations page, standard  
35 text, and all amendments and endorsements) at a location in Portland, Oregon at any time during normal  
36 business hours provided the City has given Peregrine or the Retained Party notice of its desire to review  
37 such policies at least two (2) Business Days in advance. At least thirty (30) days prior to the expiration of  
38 any such policy, Peregrine or the Retained Party shall provide a copy of the renewal certificate to the City,  
39 and promptly thereafter provide the City with copies of such renewal policies.

40 **13.5.7** The City's Spectator Venues Program Manager will review the certificates for  
41 approval. The City's Spectator Venues Program Manager may reject any proposed certificate if the  
42 insurance proposed to be provided is not the same as the coverage required by this Agreement, may  
43 reject the certificate if it is unclear, or require that the underlying policy be presented for review. If the



1 City's Spectator Venues Program Manager determines that the certificates are unclear, the Retained Party  
2 shall provide revised certificates that clearly show the insurance required by this Agreement has been  
3 obtained. Review or approval of the City's Spectator Venues Program Manager of any insurance certificate  
4 does not excuse Peregrine or the Retained Party from providing the insurance required by this Agreement.

5 **13.5.8** Any deductible in excess of \$100,000 shall be disclosed to the City in writing prior  
6 to beginning performance of any Work by the Retained Party, and is subject to the City's Spectator Venues  
7 Program Manager approval.

8 **13.5.9 Negligence of City**

9 Nothing in this Section 13 requires Peregrine or a Retained Party or its insurer to provide insurance  
10 to the City for claims arising out of the death or bodily injury to persons or damage to property caused, in  
11 whole or in part, by the negligence of the City.

12 **13.5.10 Claims of Damage**

13 Peregrine and each Retained Party shall defend, indemnify, and hold the City harmless from any  
14 and all claims of damage, including attorney fees and costs, resulting from Peregrine's or the Retained  
15 Party's activities in regard to notification of utilities and emergency service providers.

16 **13.5.11 All insurance coverage obtained by the Retained Party and Peregrine:**

17 **13.5.11.1** Shall not be affected by any insurance coverage otherwise  
18 existing;

19 **13.5.11.2** Shall protect each insured in the same manner as though a  
20 separate policy had been issued to each, notwithstanding the naming of any number of additional  
21 insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the  
22 policy beyond the amount, or amounts, for which the insurer would have been liable if only one person  
23 or entity had been named as the insured;

24 **13.5.11.3** Shall permit partial or beneficial occupancy or use of the Project  
25 by Peregrine in advance of Substantial Completion without cancellation or discontinuance of coverage. In  
26 that event, Peregrine and the Retained Party shall agree upon the time when partial occupancy or use of  
27 the Project by Peregrine shall occur. If the insurance coverage provided by the Retained Party requires  
28 consent of the Insurer before such occupancy or use occurs, the insurance policy shall also state that such  
29 consent shall not be unreasonably withheld. The City, Peregrine, and Retained Party shall take reasonable  
30 steps to obtain consent of the insurance company or companies and agree to take no action, other than  
31 upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation,  
32 lapse, or reduction of insurance.

33 **13.5.12** All requirements set forth in this Section 13.5 that reasonably should apply to  
34 coverages that survive termination of this Agreement shall also survive termination of this Agreement  
35 until the expiration of the applicable coverage requirement under this Section 13, at which time the  
36 requirements under this Section 13.5 shall terminate and cease to have any effect with regard to the  
37 expired coverage requirement (for example, and not as a limiting factor, requirements to provide  
38 certificates of insurance and to name specified parties as additional insureds).

1           **13.6 Waiver of Recovery**

2           Neither Peregrine nor the City nor the Contractor shall be liable to any other Party or the  
3 Contractor or to any insurance company (by way of subrogation or otherwise) insuring any other Party or  
4 the Contractor for any loss or damage to property or injury to persons, even though such loss or damage  
5 might have been occasioned by the negligence of such Party or the Contractor, its agents or employees,  
6 if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such  
7 loss or damage. This Section 13.6 shall survive the termination of this Agreement.

8           **13.7 Failure to Maintain Insurance**

9           If Peregrine fails or refuses to procure or maintain the insurance required by this Section 13, after  
10 five (5) days prior notice to Peregrine, the City shall have the right, at its election, to procure and maintain  
11 such insurance, in which event, any reasonable premium paid by the City, plus interest at the rate of  
12 Default Interest computed from the date such premium is paid by the City, shall be due and payable by  
13 Peregrine to the City on the first day of the month following the date on which such premium was paid.  
14 The City shall give prompt notice to Peregrine of the payment of any premium stating the amount paid.  
15 This Section 13.7 shall survive the termination of this Agreement until the expiration of such insurance  
16 requirement under this Section 13, at which time the provisions of this Section 13.7 shall terminate and  
17 cease to have any effect with regard to the expired insurance requirement.

18           **13.8 Proceeds Disposition**

19           **13.8.1** Unless otherwise agreed by Peregrine and City in writing, insurance proceeds  
20 with respect to loss or damage to the Expansion Improvements, under the provisions of a policy of  
21 insurance, shall be used for the repair and restoration of the Expansion Improvements in accordance with  
22 the 100% Construction Documents approved by the City, pursuant to Section 14. To the extent that such  
23 proceeds exceed the costs of such repair or restoration, such excess shall be distributed as provided in  
24 Section 14.3. If the insurance proceeds are less than the costs of such repair and restoration, the  
25 provisions of Section 14 shall control. This Section 13.8.1 shall survive termination of this Agreement.

26           **13.8.2** Insurance proceeds from the CGL policy referred to in Section 13.1.2 shall be used  
27 to indemnify the Parties from third party claims.

28           **13.9 Changes in Insurance Requirements**

29           Any modification or variation from the insurance requirements in this Agreement shall be made  
30 by the City Risk Management Office or by the CAO, whose decision shall be final. Such action will not  
31 require a formal Agreement amendment, but may be made by administrative action. Until Final  
32 Completion of the Project, the City shall have the right to annually review the insured limits under this  
33 Section 13 and make changes deemed appropriate by the City in its reasonable discretion.

34           **SECTION 14 DAMAGE OR DESTRUCTION DURING CONSTRUCTION**

35           Until Final Completion, the damage and destruction provisions in Section 12 of the Operating  
36 Agreement will apply only to those parts of the Stadium where no construction of the Expansion  
37 Improvements is taking place. If the Operating Agreement is terminated in accordance with Section 12.3

1 of the Operating Agreement, this Agreement shall terminate on the same date as the termination of the  
2 Operating Agreement.

### 3 14.1 Adequately Insured Damage

4 Subject to the provisions of Sections 14.2 and 14.3, if the Expansion Improvements are damaged  
5 or otherwise destroyed prior to Final Completion and such damage or destruction was caused by a  
6 casualty covered by insurance and insurance proceeds are paid under an insurance policy maintained by  
7 Peregrine as required by Section 13, such insurance proceeds ("Insurance Proceeds") shall be delivered  
8 to Peregrine and held by Peregrine in a separate account ("Insurance Proceeds Account"). If the insurance  
9 proceeds are sufficient, Peregrine shall complete the Expansion Improvements in accordance with the  
10 100% Construction Documents approved by the City and in compliance with this Agreement and then-  
11 applicable Governmental requirements. All such restoration shall be performed by Peregrine. If and to the  
12 extent that the restoration requires changes or additions to the 100% Construction Documents, the City  
13 shall approve the plans and specifications for the restoration based on whether: (a) the restoration plans  
14 and specifications are generally consistent with the 100% Construction Documents approved by the City;  
15 (b) whether the restoration plans and specifications are consistent with the Design Review Process  
16 decision, or, if not so consistent, then approved by the City, subject to any required amended Design  
17 Review Process; and (c) whether the City's approval or disapproval is otherwise reasonable based upon  
18 the operational characteristics or aesthetics of the proposed design of the Expansion Improvements. The  
19 provisions of Section 8 shall apply to such restoration plans and specifications. Peregrine shall disburse  
20 the funds from the Insurance Proceeds Account, as necessary and so that the Expansion Improvements  
21 can be restored in a timely manner, taking into account the result of any delays created by the damage or  
22 destruction, and shall retain any proceeds remaining in the Insurance Proceeds Account following Final  
23 Completion of the restoration in accordance with the 100% Construction Documents approved by the City  
24 and payment in full of all costs and expenses related to such restoration.

### 25 14.2 Insurance Deficiency and Termination

26 If the Expansion Improvements are damaged or otherwise destroyed prior to Final Completion by  
27 a casualty not fully covered under the insurance required by Section 13 and, accordingly, there are no  
28 Insurance Proceeds, or, if so covered, the Insurance Proceeds are insufficient to pay the costs to complete  
29 the Expansion Improvements pursuant to the then-approved 100% Construction Drawings, then the City  
30 and Peregrine shall reasonably determine the amount of the Insurance Deficiency within ninety (90) days  
31 after the date such damage or destruction occurred (the "Destruction Date"). Within thirty (30) days after  
32 determining the amount of the Insurance Deficiency, Peregrine may elect, in its sole and absolute  
33 discretion, to fund the Insurance Deficiency. If Peregrine elects to fund the Insurance Deficiency, then  
34 this Agreement shall remain in full force and effect and Peregrine shall proceed under Section 14.1 to  
35 complete the Expansion Improvements. If Peregrine elects not to fund the entire Insurance Deficiency  
36 within the 30-day period allowed for such determination, then, within thirty (30) days from its election  
37 not to fund the Insurance Deficiency, Peregrine shall elect to either (a) restore the Stadium to a condition  
38 that is at least as good or better than what existed prior to the commencement of the Expansion  
39 Improvements (the "Restoration Plan"), or (b) construct improvements in accordance with a plan that  
40 differs from the then-applicable 100% Construction Drawings (the "New Plan"). The Restoration Plan or  
41 the New Plan, as applicable, shall be prepared by Peregrine at its cost and expense and approved by the  
42 City in accordance with Section 8 above. If the City approves the Restoration Plan or the New Plan, as  
43 applicable, all work to be conducted under such plan shall be subject to all required City regulatory  
44 approvals and performed by Peregrine in conformance with such approved plan. Peregrine shall pay all



1 costs and expenses to complete the work pursuant to the City-approved Restoration Plan or New Plan. If  
 2 the City disapproves the Restoration Plan or the New Plan, this Agreement shall terminate and the  
 3 Insurance Proceeds shall be paid in accordance with Section 14.3, unless the City, within ten (10) Business  
 4 Days after notice of such disapproval to Peregrine, elects to fund the Insurance Deficiency in lieu of  
 5 Peregrine, which election the City may make in its sole and absolute discretion. If Peregrine elects to  
 6 proceed with a Restoration Plan under 14.2(a), then Section 6.11 of the Operating Agreement  
 7 Amendment shall be of no force or effect, except that Peregrine shall pay to the City an amount equal to  
 8 any actual Existing Seats Exemption by Peregrine within thirty (30) days of first presenting the Restoration  
 9 Plan to the City. If Peregrine elects to proceed with a New Plan under 14.2(b), then Sections 6.11.1 and  
 10 6.11.2 of the Operating Agreement Amendment will be of no force or effect, and the Parties will work  
 11 diligently and cooperatively to renegotiate Section 6.11 of the Operating Agreement Amendment such  
 12 that the financial terms accruing to the benefit of Peregrine are reasonable in light of the New Plan  
 13 approved by the City. Notwithstanding the foregoing, if there is an Insurance Deficiency and such  
 14 Insurance Deficiency is due to Peregrine's failure to obtain and maintain or to cause a third party to obtain  
 15 and maintain insurance in accordance with Section 13, then Peregrine shall be solely responsible for and  
 16 will pay the Insurance Deficiency up to the amount of the required coverage limits and such payment shall  
 17 be made within thirty (30) days of Peregrine and the City determining the amount of the Insurance  
 18 Deficiency and prior to Peregrine making any election under Section 14.2(a) or (b). For example, if  
 19 Peregrine was required to cause the Contractor to carry \$40 million of Builder's Risk coverage and the  
 20 Contractor maintained only \$35 million of Builder's Risk coverage, then Peregrine would be obligated to  
 21 fund \$5 million of any Insurance Deficiency.

#### 22 **14.3 Disposition on Termination**

23 If this Agreement is terminated pursuant to Section 14.2, any Insurance Proceeds or other funds  
 24 deposited in the Insurance Proceeds Account shall be allocated between the Parties and paid as provided  
 25 for Condemnation proceeds in Section 13.1.2 of the Operating Agreement. If the Parties are unable to  
 26 agree on the above allocation, then the matter shall be resolved through Dispute Resolution.

#### 27 **14.4 Applicability of Provisions**

28 The provisions of this Section 14 shall be applicable to the Expansion Improvements until they are  
 29 all Substantially Complete and thereafter the provisions regarding damage or destruction contained in the  
 30 Operating Agreement shall control.

### 31 **SECTION 15 EMINENT DOMAIN DURING CONSTRUCTION**

#### 32 **15.1 Substantial Completion**

33 Prior to Substantial Completion of the Expansion Improvements, if all or a Substantial Portion of  
 34 the Expansion Improvements are taken by right of eminent domain, with or without litigation, or are  
 35 transferred in lieu of or under threat of such action (any such action to be referred to herein as a "Taking"),  
 36 Peregrine and the City, respectively, shall have the right, in their respective sole discretion, exercisable at  
 37 any time within ninety (90) days after the official written notice of the Taking and its scope is issued by  
 38 the condemnor and received by Peregrine and the City (the "Taking Date"), to terminate this Agreement,  
 39 in which event, the Parties shall be released from all future liability under this Agreement (such release to  
 40 be effective upon the termination of this Agreement pursuant to this Section 15.1); provided, however,  
 41 that no Party shall be released from any liability hereunder that has accrued on or before such

1 termination. The payment or other award from the condemnor attributable to the value of the Expansion  
 2 Improvements or the Expansion Site ("Award") shall be distributed as provided in Section 13.1.2 of the  
 3 Operating Agreement. As used in this Section 15, the term "Substantial Portion" means the Taking of any  
 4 portion of the Stadium that would substantially interfere with the construction or operation of the  
 5 Expansion, as reasonably determined by Peregrine and reasonably approved by the City.

## 6 15.2 Partial

7 15.2.1 If less than a Substantial Portion of the Expansion Improvements is the subject of  
 8 a Taking, or if a Substantial Portion or more of the Expansion Improvements is the subject of a Taking but  
 9 neither Peregrine nor the City terminates this Agreement as provided in Section 15.1 and the Award is  
 10 sufficient to restore the remaining Expansion Improvements to a condition that makes them functionally  
 11 sufficient for the purpose for which they were constructed, then: (a) the Award shall be distributed as  
 12 provided in Section 13.1.2 of the Operating Agreement and (b) Peregrine shall restore the remainder of  
 13 the Expansion Improvements not affected by the Taking to a condition that makes them function in  
 14 substantially the same manner and character as they were before the Taking Date, and this Agreement  
 15 shall continue in effect. Such restoration shall be in accordance with new plans prepared and approved  
 16 by the City in the same manner as the 100% Design Development Documents and the 100% Construction  
 17 Documents as provided for in Section 8.

18 15.2.2 If the costs of restoring the Expansion Improvements to the condition referred to  
 19 in Section 15.2.1 exceed the amount of the Award (the "Condemnation Deficiency"), then the provisions  
 20 of Section 14.2 shall apply to the Condemnation Deficiency as though the Condemnation Deficiency was  
 21 an Insurance Deficiency.

## 22 15.3 Distribution in the Event of Substantial Taking

23 15.3.1 If this Agreement is terminated on account of a Substantial Taking pursuant to  
 24 Section 15.1, then the condemnation Award shall be allocated between the Parties and paid as  
 25 provided for Condemnation proceeds in Section 13.1.2 of the Operating Agreement. If the Parties are  
 26 unable to agree on the above allocation, or the court hearing the Taking does not establish the allocation,  
 27 then the matter shall be resolved through Dispute Resolution.

## 28 15.4 Applicability of Provisions

29 The provisions of this Section 15 shall be applicable to the Expansion Improvements until they are  
 30 all Substantially Complete and thereafter the provisions regarding condemnation as contained in the  
 31 Operating Agreement shall control.

## 32 SECTION 16 DEFAULT; REMEDIES

### 33 16.1 Default

34 16.1.1 The default or failure of a Party (not otherwise excused) to perform a material  
 35 obligation imposed on that Party under this Agreement shall be an Event of Default on the part of such  
 36 Party if the following conditions are met: (a) the non-defaulting Party has served a written notice of  
 37 default or demand for performance on the defaulting Party specifying the nature of the alleged default  
 38 and the actions required to cure the alleged default; and (b) (i) if the matter is subject to Dispute



1 Resolution, the Dispute Resolution has been concluded and has determined that a default does exist on  
 2 the part of the defaulting Party, and the defaulting Party has not cured or diligently commenced the curing  
 3 of the default within a reasonable time following the determination of Dispute Resolution, or (ii) if the  
 4 matter has not been referred for resolution under the Dispute Resolution, the defaulting Party has not  
 5 cured or diligently commenced the curing of the default within a reasonable time following the receipt of  
 6 notice of default or demand for performance under (a) above, and the defaulting Party has not diligently  
 7 prosecuted such cure to completion. For purposes of this Section 16, a reasonable time shall be: (w) ten  
 8 (10) Business Days in the case of a failure to pay a sum of money or Peregrine's failure to maintain the  
 9 effectiveness of the LOC through Final Completion; (x) ten (10) Business Days in the case of a failure to  
 10 give an approval or execute a document; (y) thirty (30) Business Days in the case of obligations that can  
 11 be performed within such time; and (z) such time as is reasonably appropriate under the circumstances  
 12 in the case of obligations that cannot be performed within thirty (30) Business Days, provided that the  
 13 defaulting Party has commenced to cure said default as early as reasonably possible within such thirty  
 14 (30) Business-Day period and has diligently prosecuted such cure to completion.

15 **16.1.2** In the case of Peregrine's obligation under this Agreement to comply with the  
 16 terms of the Good Neighbor Agreement, a Violation, as defined in the Good Neighbor Agreement, for  
 17 which Peregrine has paid the levied fine or performed whatever is required by the Code Hearings Officer,  
 18 shall not constitute an Event of Default, but such Violation will constitute an Event of Default if Peregrine  
 19 fails to pay the fine or perform whatever is required by the Code Hearings Officer.

## 20 **16.2 Remedies**

21 **16.2.1** Subject to the limitations on the City's liability set forth in Section 16.3, and the  
 22 limitations on termination as provided in Section 17.2 the City and Peregrine shall have all rights available  
 23 to them at law or in equity arising out of a breach or default of the other Party under this Agreement  
 24 (including the breach of any representation or warranty by the other Party), including but not limited to  
 25 the right to specific performance, the right to enforce a Dispute Resolution determination under Section  
 26 11, and the rights to pursue payment of any amounts owed or claimed to be owed by a Party under this  
 27 Agreement and the right to seek such recovery, damages, or other relief, as may be available at law or in  
 28 equity, except as may be explicitly limited by this Agreement, suffered by a Party and caused by a material  
 29 breach or default by the other Party or by the failure of the other Party to follow a determination rendered  
 30 pursuant to Dispute Resolution. Any provision under this Agreement to the effect that the City bears no  
 31 responsibility for, or is not obligated to contribute to, a cost increase or Cost Overrun shall not be read to  
 32 limit any recovery, damages, or other relief for any cost increase or Cost Overrun caused by a negligent  
 33 act or omission of the City, or its agents or representatives, in its proprietary capacity under this  
 34 Agreement.

## 35 **16.3 Limitations on Liability of the Parties**

36 **16.3.1** The City shall not be liable for damages to Peregrine or any other person or entity  
 37 by reason of delays in the commencement, prosecution, and completion of design and construction of  
 38 the Expansion Improvements arising from the City's exercise of its regulatory authority, unless the City  
 39 would have been liable in the absence of this Agreement.

40 **16.3.2** Subject to Section 16.3.1, the provisions of this Section 16.3 shall not limit actions  
 41 by either Party, following any Dispute Resolution pursuant to this Agreement, to: (a) enforce payments of  
 42 money owed by the other Party or otherwise required to be expended by the other under the provisions



1 of this Agreement; (b) to enforce express indemnification provisions in this Agreement; or (c) to enforce  
2 other monetary or non-monetary obligations of the other.

3 **16.3.3** No member, officer, agent, consultant, or employee of the City shall be personally  
4 liable to Peregrine, its members or Affiliates, in the event of any default or breach by City or for any  
5 amounts owed to Peregrine, its members or Affiliates, or on any obligation under the terms of this  
6 Agreement. Other than the obligations under the Performance and Completion or Make Whole Guaranty,  
7 no member, manager agent, consultant, or employee of Peregrine shall be personally liable to the City in  
8 the event of any default or breach by Peregrine or for any amounts owed to the City or on any obligation  
9 under the terms of this Agreement.

10 **16.3.4** Notwithstanding anything in this Agreement or any Related Agreement to the  
11 contrary, the City and Peregrine waive any and all claims against the other Party for consequential  
12 damages arising out of or relating to this Agreement or the Party's default, performance, or  
13 nonperformance hereof, including without limitation damages for indirect expenses, losses of use,  
14 income, profit, financing, business reputation, or loss of services of persons.

## 15 **16.4 Indemnification**

16 **16.4.1 By Peregrine to the City.** Subject to any applicable limitations on liability stated  
17 elsewhere in the Agreement or at Law, Peregrine shall hold harmless, indemnify, and defend the City and  
18 its officers, employees, and agents (collectively, the "City Indemnitees") from and against all claims,  
19 demands, penalties, and causes of action of any kind or character relating to or arising from this  
20 Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on  
21 account of personal injury, death, damage to property, or violation of law, which arises out of, or results  
22 from, the acts or omissions of Peregrine, its officers, employees, agents, Affiliates, consultants,  
23 contractors, or subcontractors.

24 **16.4.2 By the City to Peregrine.** Subject to any applicable limitations on liability stated  
25 elsewhere in the Agreement or at Law, including the Oregon Constitution and the Oregon Tort Claims Act,  
26 City shall hold harmless, indemnify, and defend Peregrine and its officers, employees, and agents from  
27 and against all claims, demands, penalties, and causes of action of any kind or character relating to or  
28 arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any  
29 person on account of personal injury, death, damage to property, or violation of law, which arises out of,  
30 or results from, the acts or omissions of the City, its officers, employees, or agents.

## 31 **16.5 Unenforceability**

32 If a court having jurisdiction over the Parties holds that this Agreement or any of the Related  
33 Agreements is invalid or unenforceable in whole or in part for any reason, including without limitation by  
34 reason of application of any provision of the City Charter, then the City and Peregrine covenant to each  
35 other to use Reasonable Efforts to mitigate their respective damages by attempting to put the Parties  
36 back into the same position that they would have been but for the holding of invalidity or unenforceability.  
37 To this end, if this Agreement or any of the Related Agreements is held to be invalid or unenforceable by  
38 reason of application of the City Charter, then the City shall have the option to require Peregrine to enter  
39 into an agreement or series of agreements on terms which are identical in effect to the agreement or  
40 agreements which were held to be invalid or unenforceable, which would give the Parties the full benefit  
41 of their bargain as if such Agreement and Related Agreements were totally valid and enforceable in every

1 respect. Notwithstanding the foregoing, if the City does not exercise its option in a manner which gives to  
 2 Peregrine the full benefit of its bargain, Peregrine shall retain all rights and remedies otherwise available  
 3 at law, equity, or pursuant to this Agreement and all of the Related Agreements.

4 This SECTION 16 shall survive the termination of this Agreement.

5 **SECTION 17** TERM AND TERMINATION

6 **17.1 Term**

7 **17.1.1** The term of this Agreement shall commence as of the Effective Date and shall  
 8 terminate pursuant to the provisions of Section 17.2 (the "Term").

9 **17.1.2** The Parties acknowledge that, prior to the Effective Date, the Parties have  
 10 performed certain of their obligations contemplated by this Agreement. Each Party acknowledges that to  
 11 its knowledge, there are no existing defaults by the other Party with respect to those obligations  
 12 performed by the Parties prior to the Effective Date.

13 **17.2 Termination**

14 **17.2.1** This Agreement shall terminate only upon the occurrence of any of the following  
 15 circumstances. Except as provided for in this Section 17.2, there is no other right to terminate this  
 16 Agreement.

17 **17.2.1.1** Upon written agreement of both Parties;

18 **17.2.1.2** At the election of the non-defaulting Party, upon occurrence of  
 19 an Event of Default and the defaulting Party's failure to cure the Event of Default as required by Section  
 20 16.1.1;

21 **17.2.1.3** Under the limited circumstances set forth in Section 14 relating  
 22 to damage or destruction and Section 15 relating to eminent domain;

23 **17.2.1.4** In the event Peregrine files a voluntary petition for bankruptcy,  
 24 Peregrine is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty (60)  
 25 days of when filed, or Peregrine makes a general assignment for the benefit of its creditors; or

26 **17.2.1.5** In the event the City files a voluntary petition for bankruptcy, the  
 27 City is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty (60) days  
 28 of when filed, or the City makes a general assignment for the benefit of its creditors.

29 **17.2.1.6** Upon issuance of the Certificate of Final Completion.

30 **17.2.2** Notwithstanding the termination of this Agreement pursuant to Section 18.2, the  
 31 Parties' rights and obligations arising prior to termination and reimbursements or payments (including  
 32 payments of Insurance Proceeds) from the other Party shall survive and remain in full force and effect to  
 33 the extent necessary to enforce the terms thereof.

1           **17.3 City Right to Suspend and Carry out Work**

2           **17.3.1** If the Contractor fails to correct work which is not in accordance with the  
3 requirements of this Agreement within a reasonable time or fails to carry out work in accordance with  
4 this Agreement and the applicable Retained Party Contract, the City may direct Peregrine to order the  
5 Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

6           **17.3.2** If Peregrine defaults or neglects to carry out the work in accordance with this  
7 Agreement, and fails within fourteen (14) days after receipt of written notice from the City to commence  
8 and continue correction of such default or neglect with diligence and promptness, the City may, without  
9 prejudice to other remedies, commence and continue to carry out the work and Peregrine shall promptly  
10 reimburse the actual, out-of-pocket costs thereof to the City, including compensation for additional  
11 services and expenses made necessary by such default, neglect, or failure. The right of the City to take  
12 over the work pursuant to this Section shall not give rise to any duty on the part of the City to exercise  
13 this right. This right shall be in addition to, and not in restriction of, the City's other rights under this  
14 Agreement, and shall not excuse Peregrine or the Contractor from failure of performance of this  
15 Agreement.

16   **SECTION 18**    **CITY'S POLICE POWER; REGULATORY AUTHORITY**

17           **18.1 Police Power.**

18           The Parties recognize that the City must retain its regulatory powers and that the City's regulatory  
19 bodies, in carrying out their responsibilities, should do so independently without influence by other City  
20 official and employees. The City agrees that such other City officials and employees, during the term of  
21 this Agreement, shall not seek to influence the City's regulatory bodies in a manner that would otherwise  
22 deny to Peregrine the benefits of the City's covenants and obligations under this Agreement or would  
23 otherwise allow the City to accomplish a result that would not be permitted under the terms and  
24 conditions of this Agreement. This Section 18 shall not restrict the City's staff from performing its usual  
25 regulatory review, comment, and advisory functions. Nothing in this Agreement shall be construed to limit  
26 or affect the City's exercise of its police powers nor the ability of Peregrine to bring claims against the City  
27 in its regulatory capacity in accordance with applicable law.

28           **18.2 Regulatory Authority**

29           By entering into this Agreement and the Related Agreements, the City is specifically not obligating  
30 itself or any other agency with respect to any discretionary or regulatory action relating to development  
31 or operation of the Expansion Improvements, including, but not limited to, rezoning, variances,  
32 environmental clearances, regulatory plan reviews, code compliance, or any other governmental agency  
33 approvals or regulatory actions which are or may be required or authorized. When reasonably feasible to  
34 do so, the City will work in good faith to facilitate the cooperation of, and coordination among, the City's  
35 Bureaus with respect to the Expansion. This Section 18 shall survive the termination of this Agreement.

36   **SECTION 19**    **COMPREHENSIVE TRANSPORTATION MANAGEMENT PLAN**

37           Peregrine shall retain a transportation consultant to measure and evaluate current traffic and  
38 transportation-related conditions near the Stadium, as they currently exist, to extrapolate potential future  
39 impacts based on Peregrine's projected Event mix at the newly renovated Stadium, and to recommend



1 measures to mitigate the impacts of additional traffic from events at the Stadium. This information shall  
 2 be made available to the City at the same time it is submitted to Peregrine. The cost of preparing the  
 3 update to the CTMP will be borne solely by Peregrine.

4 **SECTION 20** GENERAL PROVISIONS

5 **20.1 Conflict of Interests**

6 No member, official, or employee of the City shall have any personal economic interest, direct or  
 7 indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision  
 8 relating to this Agreement which affects his or her personal interests or the economic interests of any  
 9 corporation, partnership, or association in which he or she is, directly or indirectly, interested. For  
 10 purposes of this Section 20.1, merely being a patron or sponsor of Events held at the Stadium or the  
 11 Expansion shall be deemed to not constitute a personal interest.

12 **20.2 Discrimination and Compliance With Law**

13 No Party or its respective successors or assigns shall, during the term of this Agreement, illegally  
 14 discriminate against any employee or applicant for employment because of race, age, color, religion,  
 15 gender, marital status, disability, sexual orientation, or national origin. Each Party to this Agreement shall  
 16 comply with all applicable Laws relating to its respective obligations under this Agreement.

17 **20.3 Notice**

18 A notice or communication under this Agreement by a Party to another Party shall be sufficiently  
 19 given or delivered by: (a) personal delivery; (b) sending an email copy with confirmation of delivery, if  
 20 simultaneously sent via a another means in this Section 20.3; (c) registered or certified mail, postage  
 21 prepaid, return receipt requested; or (d) delivery service or "overnight delivery" service that provides a  
 22 written confirmation of delivery, each addressed to a Party as follows:

23 **If to the City:** Office of Management and Finance  
 24 City of Portland  
 25 1120 S.W. Fifth Avenue, 12<sup>th</sup> Floor  
 26 Portland, Oregon 97204  
 27 Attn: Spectator Venue Program Manager  
 28 Email: SpectatorFacilities@portlandoregon.gov

29  
 30 **With a Copy To:** Office of the City Attorney  
 31 City of Portland  
 32 1221 S.W. Fourth Avenue, 4<sup>th</sup> Floor  
 33 Portland, Oregon 97204  
 34 Attn: City Attorney  
 35 Email: ATContractReview@portlandoregon.gov

36  
 37 **And a Copy To:** Radler White Parks & Alexander  
 38 111 SW Columbia Street, Suite 700  
 39 Portland, Oregon 97217  
 40 Attn: Dina Alexander

1 Email: dalexander@radlerwhite.com

2

3 If to Peregrine: Peregrine Sports LLC  
 4 1844 S.W. Morrison  
 5 Portland, OR 97205  
 6 Attn: Merritt Paulson  
 7 Email: mpaulson@timbers.com

8

9 *With a copy to:* Portland Timbers  
 10 1844 SW Morrison Street  
 11 Portland, Oregon 97205  
 12 Attn: Mike Golub  
 13 Confirmation No.: 503-553-5401  
 14 Email: mgolub@timbers.com

15

16 *And a Copy To:* Stoel Rives LLP  
 17 760 SW 9th Avenue, Suite 3000  
 18 Portland, Oregon 97205  
 19 Attn: Wally Van Valkenberg  
 20 Confirmation No. 503-294-9514  
 21 Email: wally.vanvalkenburg@stoel.com

22

23 Each party may by notice to the other Party, specify a different address for subsequent notice  
 24 purposes. Notices may be sent by counsel for a Party. Notice shall be deemed effective on the earlier of  
 25 actual delivery or refusal of a Party to accept delivery; provided that notices delivered by facsimile shall  
 26 not be deemed effective unless simultaneously transmitted by another means allowed under this Section  
 27 20.3. For a notice to be effective, the copied persons must also be given notice.

#### 28 **20.4 Nonmerger**

29 None of the provisions of this Agreement are intended to or shall be merged by reason of the  
 30 Operating Agreement between the City and Peregrine, or between any successors in interest of any real  
 31 property comprising the Stadium. The Operating Agreement shall not be deemed to affect or impair the  
 32 provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

#### 33 **20.5 Headings**

34 Any titles of the several parts and sections of (and the table of contents of and the index to) this  
 35 Agreement are inserted for convenience of reference only and shall be disregarded in constructing or  
 36 interpreting any of its provisions.

#### 37 **20.6 Counterparts**

38 This Agreement may be executed in multiple counterparts, each of which shall be deemed to be  
 39 an original, and such counterparts shall constitute one and the same instrument. For the convenience of  
 40 the Parties, the execution pages of any executed counterpart may be detached and reattached to any  
 41 other executed counterpart to form one or more documents that are fully executed. This Agreement shall  
 42 not be effective until both Parties have executed this Agreement or a counterpart of this Agreement.

1           **20.7    Waivers**

2           No waiver by any Party with respect to the performance of any obligation of the other Party or  
3 any condition of a Party's own obligation under this Agreement shall be considered a waiver of any rights  
4 of the other Party or condition of such other Party's obligation beyond those expressly waived or a waiver  
5 in any respect of any other rights of the Party making the waiver or any other obligations of the Party. No  
6 waiver by any Party of any provision of this Agreement or any breach thereof, shall be of any force and  
7 effect unless in writing and signed by the waiving Party; and no such waiver shall be construed to be a  
8 continuing waiver.

9           **20.8    Interest**

10           Whenever any sums are due and payable, from one Party to the other Party under this Agreement  
11 they shall bear interest from the date originally due until paid in full at the greater of the Prime Rate plus  
12 four (4) percentage points or 10% ("Default Interest") if it is determined as a result of Dispute Resolution  
13 that the Party failing to make the payment when due did not have a good faith and reasonable basis not  
14 to make the payment when due. If it is determined, as a result of Dispute Resolution, that the Party failing  
15 to make the payment when due did have a good faith and reasonable basis not to make the payment  
16 when due, such sums shall bear interest from the date due until paid in full at the Prime Rate plus two (2)  
17 percentage points ("Economic Interest"). The "Prime Rate" shall mean the prime rate of interest as quoted  
18 from time to time in The Wall Street Journal, or any successor publication.

19           **20.9    Choice of Law**

20           This Agreement shall be interpreted under the laws of the State of Oregon.

21           **20.10   Time of Essence**

22           Time is of the essence in this Agreement.

23           **20.11   Calculation of Time**

24           All periods of time referred to in this Agreement and not otherwise specified as Business Days  
25 shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of  
26 any period falls on any Saturday, Sunday, or such legal holiday, the period shall be extended to include  
27 the next day which is not a Saturday, Sunday, or such legal holiday. "Business Days" shall mean all days  
28 when City offices are scheduled to be open to the public for business.

29           **20.12   Construction**

30           In construing this Agreement, if the context so requires, the singular pronoun shall be taken to  
31 mean and include the plural, the masculine, the feminine, and the neuter. The term "including" and  
32 variations thereof shall mean including without limitation. The word "shall" means mandatory and  
33 imperative. The terms and conditions of this Section 20 shall survive the termination of this Agreement.

34           **20.13   Severability**

35           If any clause, sentence of any other portion of the terms and conditions of this Agreement  
36 becomes illegal, null, or void for any reason, or are held by any court of competent jurisdiction to be so,  
37 the remaining portions will remain in full force and effect.



1           **20.14 Entire Agreement**

2           This Agreement, the Related Agreements and the agreements referred to in those agreements  
3 constitute the entire agreement between the Parties as of the Effective Date.

4           **20.15 Modifications**

5           Any modifications to this Agreement must be made in writing and executed by the Parties.

6           **20.16 Assignment; Successors and Assigns**

7           Peregrine shall not assign or transfer this Agreement or any interest in this Agreement or  
8 encumber or grant a security interest in this Agreement or in any interest under this Agreement, nor shall  
9 there be any changes in the manager of Peregrine (other than those resulting from death or incapacity),  
10 without the express written approval of the City, which approval shall be in the City's sole and absolute  
11 discretion. Following Substantial Completion of all Expansion Improvements, the applicable provisions of  
12 the Related Agreements shall govern assignments and transfers of interest. Subject to the terms of this  
13 Agreement, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall  
14 inure to the benefit of and bind the successors and assigns of the Parties, and the obligations of the Parties  
15 and the remedies for the breach thereof, shall further be covenants and conditions running with the  
16 Stadium.

17           **20.17 Access to and Confidentiality of Documents**

18                   **20.17.1 Inspection of Records.**

19           Each Party agrees that, upon the reasonable prior notice from the other, it will make available to  
20 the requesting Party its records, reports and information pertaining to the Expansion for review, but not  
21 copying (unless agreed upon by the non-requesting Party), so as to inform the requesting Party and to  
22 enable the requesting Party to determine the other Party's compliance with the terms of this Agreement.  
23 Notwithstanding the foregoing, the City's obligation to make records, reports and information available  
24 shall be subject to ORS Chapter 192.

25                   **20.17.2 Confidentiality.**

26           Each Party agrees to keep as confidential any document or information that meets the  
27 requirements of ORS 192.502(4) and is identified by the originating Party as being confidential, by means  
28 of marking the document or information as being confidential. A Party agrees to only communicate  
29 confidential information submitted by the other Party to its legal counsel and other consultants or as  
30 required by court order or by the District Attorney upon an appeal of a public record's request. If the City  
31 is served with a public records request for the production of Peregrine's confidential information provided  
32 to the City by Peregrine, pursuant to ORS 192.410, et seq., then the City, at least seven (7) days before  
33 the City permits inspection of the records by the person making the request, will provide Peregrine with  
34 a copy of the request, so that Peregrine may take steps to prevent the disclosure of the confidential  
35 information. Notwithstanding the foregoing, the Parties acknowledge that, as a public entity, the City  
36 must comply with and will comply with ORS 192.410, et seq. In the event Peregrine objects to the  
37 production of documents and the City does not provide the documents to the person making the request,  
38 and the District Attorney or a court later orders production of the documents, Peregrine shall pay for all

1 costs resulting from such appeal to the District Attorney or court, including any attorney fees imposed on  
2 the City by its failure to provide the documents.

3 **20.18 Venue**

4 Subject to Section 11, any action or suit to enforce or construe any provision of this Agreement  
5 by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County.

6 **20.19 No Partnership**

7 Neither anything contained in this Agreement nor any acts of the Parties shall be deemed or  
8 construed by the Parties, or any of them, or by any third person, to create the relationship of principal  
9 and agent, or of partnership, or of joint venture, or of any association between any of the Parties to this  
10 Agreement.

11 **20.20 Exclusive Remedies**

12 The rights and remedies expressly afforded under the provisions of this Agreement shall be  
13 deemed exclusive, except where otherwise indicated.

14 **20.21 Estoppel Certificates**

15 Each Party shall at any reasonable time, and from time to time, within twenty (20) days after  
16 written request by the other Party, execute, acknowledge, and deliver to the requesting Party a certificate  
17 stating that: (a) this Agreement is in full force and effect and has not been modified, supplemented or  
18 amended in any way, or if there have been modifications or amendments, the Agreement is in full force  
19 and effect as modified, identifying the modification agreement; and if the Agreement is not in force and  
20 effect, the certificate shall so state; (b) the date on which the term of this Agreement commenced;  
21 (c) whether to the actual knowledge of such Party: all conditions under the Agreement to be performed  
22 by a designated Party to that date have been satisfied and, as of the date of such certificate, whether  
23 there are any existing defenses or offsets which that Party has against the enforcement of the Agreement  
24 by the other Party, or, if such conditions have not been satisfied or if there are any defenses or offsets,  
25 the certificate shall so state. The Party to whom any such certificate shall be issued may rely on the matters  
26 set forth in that certificate and thereafter the Party issuing the same shall be estopped from denying the  
27 veracity or accuracy of the same. Any certificate required to be made by the City pursuant to this Section  
28 20.21 may be made on its behalf by the CAO.

29 **20.22 No Third-Party Beneficiaries**

30 The Parties intend that the rights, obligations and covenants in this Agreement shall be exclusively  
31 enforceable by the Parties. There are no third-party beneficiaries to this Agreement.

32 **20.23 Incorporation of Exhibits by Reference**

33 All Exhibits to this Agreement are incorporated by reference as part of this Agreement as though  
34 set forth in full in this Agreement.





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PEREGRINE:

PEREGRINE SPORTS, LLC,  
a Delaware limited liability company

By: 

Printed Name: Henry Merritt Paulson III

Title: Manager

CITY:

CITY OF PORTLAND,  
a municipal corporation of the State of Oregon

By: \_\_\_\_\_

Printed Name: Ted Wheeler

Title: Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_

Tracy Reeve, City Attorney

**EXHIBIT LIST:**

|                  |   |
|------------------|---|
| Exhibit 1.1      | Definitions   |
| Exhibit 2.3      | Exclusive Use and Guaranty  |
| Exhibit 2.4      | Memorandum of Agreement   |
| Exhibit 2.5      | Expansion Completion Guaranty   |
| Exhibit 3.2.1    | Retained Parties and Retained Party Contracts   |
| Exhibit 3.2.5    | Retained Party Contract Requirements  |
| Exhibit 8.2.1    | Existing FF&E – Deliberately Blank  |
| Exhibit 8.2.2    | New FF&E  |
| Exhibit 9.8.3(a) | Final Completion Documents  |
| Exhibit 9.8.3(b) | Final Completion City's Acknowledgement Form  |
| Exhibit 10.1     | Expansion Schedule  |
| Exhibit 12.1     | Qualifications and Indemnifications Relating to City's Representatives and Warranties |

**EXHIBIT 1.1  
DEFINITIONS**

The following defined terms have the following defined meanings when used in this Expansion Redevelopment Agreement or any of the Related Agreements. Where a defined term is defined in more than one document, it has the meaning for a particular document given it in that document.

Defined terms may be used together, and when so used will have the combined meaning of the two defined terms. For example, Peregrine Representative means the Representative of Peregrine. Defined terms which are defined as a noun may also be used as a verb, or similar transformation and when so used the term will have the original meaning changed to fit its use. For example, Substantially Complete may also be used as a verb. When a defined term is defined in the body of this Agreement, that definition will not be repeated below but will be cross-referenced to the Section where it is defined.

1. **"30% Public Works Documents"** means Public Works Documents at the level of detail customarily understood in the construction industry as 30% complete.

2. **"50% Construction Documents"** means Construction Documents at the level of detail customarily understood in the construction industry as 50% complete.

3. **"60% Public Works Documents"** means Public Works Documents at the level of detail customarily understood in the construction industry as 60% complete.

4. **"75% Design Development Documents"** means Design Development Documents at the level of detail customarily understood in the construction industry as 75% complete.

5. **"75% Construction Documents"** means Construction Documents at the level of detail customarily understood in the construction industry as 75% complete.

6. **"90% Public Works Document"** means Public Works Documents at the level of detail customarily understood in the construction industry as 90% complete.

7. **"100% Construction Documents"** means Construction Documents at the level of detail customarily understood in the construction industry as 100% complete.

8. **"100% Design Development Documents"** means Design Development Documents at the level of detail customarily understood in the construction industry as 100% complete.

9. **"ACM"** is defined in Section 6.1.2.

10. **"Acts of God"** means delay occasioned by causes beyond the control of a Party (not known by the Party as of the Effective Date) and without the Party's fault or negligence, including but not limited to: acts of God or the public enemy; litigation or appeals filed by third parties which prevent or delay a Party's performance; abnormal delays in the issuance by governmental authorities of approvals or permits for the Expansion Improvements; fires, floods, epidemics, quarantine restrictions, strikes or other labor stoppages, bid protests, freight embargoes, earthquake, tornado, explosion, mob violence, or riot; the inability to procure or the rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market; incidence of disease or other illness that reaches outbreak, epidemic, endemic and/or pandemic proportions or otherwise materially affects the area in which the Expansion is



located and/or the Contractor's labor and/or supply chain; civil disturbances; war; terrorism; riots; sabotage; restraints or injunctions issued by a court or other governmental authority; malicious mischief; unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of the Parties; which delays completion of the Expansion Improvements, according to the Expansion Schedule.

11. **"Addenda"** and **"Addendum"** are defined in Recital D.
12. **"Affiliate"** means an entity that is controlled by a Party, an entity that controls a Party, or an entity under common control with a Party and control means the power to govern an entity.
13. **"Agreement"** means this Expansion Redevelopment Agreement (Elevated Eastside Seating).
14. **"Alternates"** means the alternative Construction Representatives of the City or of Peregrine, respectively.
15. **"Architect"** is defined in Recital G.
16. **"Architectural Services Agreement"** is defined in Section 2.9.
17. **"Architectural Work"** means the services to be performed by the Architect pursuant to the Architectural Services Agreement and any amendments thereto.
18. **"ASP"** is defined in Section 11.2.4.
19. **"Award"** is defined in Section 15.1.
20. **"BDS"** is defined in Section 3.5.2.
21. **"BES"** is defined in Section 3.5.2.
22. **"Bureaus"** means agencies or departments of the City of Portland, Oregon.
23. **"Business Days"** is defined in Section 20.11.
24. **"CAO"** means the Chief Administrative Officer of the City of Portland.
25. **"CAO Letter"** is defined in Recital D.
26. **"Certificate of Final Completion"** is defined in Section 9.8.3.
27. **"Certificate of Substantial Completion"** is defined in Section 9.8.1.
28. **"CGL"** is defined in 13.1.2.
29. **"Change in Law"** means the enactment, adoption, promulgation, amendment, modification or change in interpretation by a governmental authority of any Law after the Effective Date that materially and adversely impacts performance of the Phase One Work or the Phase Two Work; provided, however, that a change in any income tax Law or any Law by which a tax is levied or assessed on the basis of income, profits, revenues or gross receipts shall not be a Change in Law.

30. **"Change Order"** means a written instrument prepared by the Architect at the request of either Party or the Contractor and signed by Peregrine, the Contractor, and the Architect stating their agreement upon the following: (a) a change in the Phase One Work or Phase Two Work; (b) the amount of the adjustment in the Contractor's fee or the Contractor's GMP; or (c) the extent of the adjustment in the Expansion Schedule, if any.
31. **"Changed Conditions"** means conditions at the Expansion Site which are concealed physical conditions of a nature which differ materially from those indicated in the Drawings.
32. **"City"** means the City of Portland.
33. **"City Attorney"** means the City Attorney of the City of Portland, Oregon.
34. **"City Change"** means a change in the scope of the Expansion Improvements required by the City after the City's approval of the 100% Design Development Documents where the City has agreed in its sole discretion to pay the cost of such a scope change.
35. **"City Charter"** means the Charter of the City of Portland, Oregon.
36. **"City Code" or "City Codes"** means the Portland Municipal Code of the City of Portland, Oregon and the Uniform Building Code as administered by the City.
37. **"City Council"** means the City Council of the City of Portland, Oregon.
38. **"City Indemnitees"** is defined in Section 16.4.1.
39. **"City Utilities"** means sewer, water, gas, electricity and other utility lines owned by the City within the Expansion Site.
40. **"City's Acknowledgement Form"** means the form attached as Exhibit 9.8.3.
41. **"City's Design Commission"** means the Design Commission of the City of Portland, Oregon.
42. **"Claims"** means any and all claims, demands, losses, damages, liabilities, fines, penalties and charges, and all costs and expenses reasonably incurred in connection therewith, including reasonable attorneys' fees, costs of defense and consultants' fees.
43. **"Code Hearings Officer"** means the City's Code Enforcement Hearings Officer with jurisdiction pursuant to Portland Municipal Code, Title 22.
44. **"Commercial General Liability"** means that type of insurance coverage required to be provided by Peregrine pursuant to Section 13.4.3.
45. **"Community Outreach Plan"** means a community outreach plan prepared in accordance with the Good Neighbor Agreement.
46. **"Condemnation Account"** means an interest-bearing account administered by the City into which the Award for a Taking of a portion of the Expansion Improvements shall be deposited.

47. **“Condemnation Deficiency”** is defined in Section 15.2.2.
48. The non-capitalized terms **“conditional approval”** and **“conditionally approved”** mean approval by City staff, which approval is non-binding, and is subject to and will be ratified if the City Council approves this Agreement and upon the effective date of such Council approval, and when given in connection with Design Development Documents or in connection with Construction Documents is an approval subject to stated conditions in the approval.
49. **“Construction Documents”** shall mean working Drawings and Specifications setting forth in detail the requirements for the construction of the Expansion Improvements.
50. **“Construction Mitigation Plan”** and **“Construction Mitigation Plans”** are defined in Section 2.5.
51. **“Construction Phase”** is defined in Section 8.6.2.
52. **“Construction Representative”** means one or two individuals designated by each of the Parties as its respective representative(s) with respect to design and construction matters. The City’s Construction Representative is Jim Houchins, Wenaha Group. Peregrine’s Construction Representative is Douglas Nelson, ICON Venues Group, Inc.
53. **“Contractor”** means Turner Construction Company, a New York Corporation, or any replacement general contractor hired by Peregrine and approved by the City for the purpose of constructing the Expansion Improvements pursuant to the Agreement.
54. **“Contractor’s GMP”** means the Contractor’s Phase One GMP, the Contractor’s Phase Two GMP, or both, as applicable.
55. **“Contractor’s Phase Two GMP”** means the GMP provided in the General Construction Contract for the Phase Two Work, including Final Completion of all Expansion Improvements.
56. **“Contractor’s Phase One GMP”** means the GMP provided in the General Construction Contract for the Phase One Work.
57. **“Correction”** means the correction by Peregrine or a Retained Party of a Material Defect.
58. **“Cost Increases”** means an increase in the cost of the Expansion over the amounts set forth in the Expansion Budget.
59. **“Cost Overruns”** is defined in Section 8.6.1.
60. **“Council Meeting”** means the City Council session at which the first reading of the ordinance approving this Agreement occurs.
61. **“CTMP”** is defined in Section 2.8.
62. **“DEQ”** means the State of Oregon Department of Environmental Quality.
63. **“Default Interest”** is defined in Section 20.8.



64. **“Design Development Documents”** means drawings and other documents prepared by the Architect that fix and describe the size and character of the Expansion Improvements as to architectural, structural, mechanical, civil, plumbing, and electrical systems, materials, and such other elements as may be appropriate.
65. **“Design Documents”** is defined in Section 8.1.2.
66. **“Destruction Date”** is defined in Section 14.2.
67. **“Dispute or Disputes”** is defined in Section 11.1.1.
68. **“Dispute Resolution”** means the process set forth in Section 11 for resolution of Disputes between the City and Peregrine pursuant to this Agreement.
69. **“Dispute Resolver”** is defined in Section 11.1.1.
70. **“Drawings”** are the graphic and pictorial portions of the Construction Documents, wherever located and whenever issued, showing the design, location and dimensions of the Expansion Improvements, generally including plans, elevations, sections, details, schedules and diagrams.
71. **“Economic Interest”** is defined in Section 20.8.
72. **“Effective Date”** means that date stated in the introductory language of this Agreement.
73. **“Encroachment”** is defined in Section 9.10.
74. **“Environmental Assessment”** is defined in Section 6.1.1.
75. **“Environmental Hazards”** means any hazardous or toxic substance, material, or waste, including but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials table (49 CFR 172.101) for the United States Environmental Protection Agency as hazardous substances (40 CFR Part 302) or those hazardous substances, materials, and wastes regulated under Oregon law and amendments thereto, petroleum products, or any other substances, materials or wastes that are or become regulated under any applicable local, state or federal law relating to the protection of human health or the environment.
76. **“Environmental Laws”** means any Laws that pertain to Environmental Hazards.
77. **“Environmental Remediation”** or **“Remediation”** means any of those actions defined as removal and/or remedial actions under Section 101(23) and (24) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) or similar actions as defined under other comparable Oregon and local laws, and/or cleanup, removal, containment, monitoring, treatment, storage, disposal, or other mitigation or remediation of Environmental Hazards undertaken on, in, under or about the Expansion Site, the Stadium, or adjacent or neighboring properties.
78. **“Environmental Remediation Costs”** is defined in Section 6.4.
79. **“Environmental Remediation Plan”** is defined in Section 6.2.1.
80. **“Equitable Proceeding”** is defined in Section 11.6.

81. **"Event of Default"** means a default of the Agreement as set forth in Section 16.1.
82. **"Existing Seats Exemption"** has the meaning set forth in the Operating Agreement Amendment.
83. **"Exclusive Use and Guaranty Agreement"** means the agreement between Peregrine, the City, Henry Merritt Paulson, Jr. and Henry Merritt Paulson, III attached as Exhibit 2.3.
84. **"Excused Delays"** is any delay resulting from: (i) an Act of God; (ii) breach of the General Construction Contract by the Contractor; (iii) a Change in Law that has an adverse material effect on the ability of a Party to perform its obligations hereunder; (iv) breach of any other Retained Party Contract by a Retained Party; (v) the City's breach of this Agreement or any of the Related Agreements; and (vii) Unforeseeable Conditions at the Expansion Site.
85. **"Existing FF&E"** is defined in Section 8.2.1.
86. **"Expansion"** is defined in Recital C.
87. **"Expansion Budget"** means the all-inclusive budget for the Expansion, preliminarily estimated to total fifty million dollars (\$50,000,000).
88. **"Expansion Completion Guaranty"** is defined in Section 2.5.
89. **"Expansion Improvements"** means all physical improvements to be completed at the Stadium by Peregrine under the terms of this Agreement based upon the Drawings and Specifications.
90. **"Expansion Manager"** means ICON Venue Group, LLC.
91. **"Expansion Schedule"** is defined in Section 10.1 and is attached as Exhibit 10.1.
92. **"Expansion Site"** means that portion of the area bounded by the center lines of SW 18<sup>th</sup> Street, SW Morrison, SW 20<sup>th</sup> Street and the south edge of the easement area covered by the MAC Easement, all as further described in Exhibit 1 to the Operating Agreement, in which Expansion Improvements will be constructed.
93. **"Final Completion"** or **"Finally Complete"** means that all Phase One Work and Phase Two Work, including Punch List items, has been completed, the tasks referred to in Section 9.8.3 have been completed, and the Certificate of Final Completion has been issued.
94. **"Final Completion Date"** is defined in Section 10.1.1.
95. **"General Construction Contract"** is defined in Section 2.10.
96. **"GMP"** is defined in Section 9.12.
97. **"Good Neighbor Agreement"** is defined in Section 2.2.
98. **"Governmental"** means of or pertaining to the action of a governmental body with jurisdiction.
99. **"Guarantors"** are Henry Merritt Paulson, Jr. and Henry Merritt Paulson, III.

100. **"Initial Work"** is defined in Recital E.
101. **"Insurance Deficiency"** means that amount necessary to restore the Expansion Improvements in the event the Expansion Improvements are damaged or destroyed by a casualty not covered under the insurance required by Section 13 or if the Insurance Proceeds are insufficient to pay the cost of such restoration.
102. **"Insurance Proceeds"** is defined in Section 14.1.
103. **"Insurance Proceeds Account"** is defined in Section 14.1.
104. **"Insurance Start Date"** is defined in Section 13.
105. **"Intellectual Property Rights"** has the meaning set forth in the Architectural Services Agreement.
106. **"ISO"** has the meaning set forth in Section 13.1.2.
107. **"Law" or "Laws"** means all laws, rules, regulations, codes, and ordinances that apply to the Expansion.
108. **"Little Miller Act"** means ORS 279.526, *et seq.*
109. **"LOC"** is defined in Section 9.12.
110. **"Losses"** means any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, enforcement actions of any kind, including any required Environmental Assessment or Remediation, and all costs and expenses reasonably incurred in connection therewith, including without limitation reasonable attorneys' fees, costs of defense, consultants' fees and laboratory costs, but excluding any consequential damages and lost profits, from and after the Effective Date and not known to the Party claiming losses prior to the Effective Date.
111. **"MAC"** means the Multnomah Athletic Club.
112. **"MAC Easement"** means the Amended and Restated Easement Agreement and Right of First Refusal recorded on March 10, 2010.
113. **"MAC Parcel"** means that portion of the Stadium owned by the MAC.
114. **"Material Defect"** means a portion of the Expansion Improvements that is materially defective under the terms of the Architectural Services Agreement, the General Construction Contract, or another Retained Party Contract.
115. **"Memoranda of Agreement"** means those certain memoranda pertaining to this Agreement and the Related Agreements attached as Exhibit 2.4.
116. **"MLS"** is defined in Recital A.
117. **"MLS Letter"** is defined in Section 4.6.
118. **"New FF&E"** is defined in Section 8.2.2.



119. **"New Plan"** is defined in Section 14.2.
120. **"NWSL"** is defined in Recital A.
121. **"OAC"** is defined in 9.3.6.
122. **"Operating Agreement"** is defined in Recital B.
123. **"Operating Agreement Amendment"** means that certain Second Amendment to the Stadium Operating Agreement executed by the Parties and dated as of the date of this Agreement.
124. **"ORS"** means the Oregon Revised Statutes.
125. **"Owner"** means the City, the owner of the Stadium (with the exception of the MAC Parcel).
126. **"Parties"** means the City and Peregrine with respect to this Agreement or any party to an agreement in which that defined term is used or to which it refers.
127. **"Party"** means either Peregrine or the City.
128. **"Peregrine"** means Peregrine Sports LLC, a Delaware limited liability company.
129. **"Peregrine Related Parties"** is defined in Section 3.5.2.
130. **"Permit Submittal"** means the permit set of Construction Documents.
131. **"Phase One Expansion Improvements"** or **"Phase One Work"** is defined in Recital F.
132. **"Phase Two Expansion Improvements"** or **"Phase Two Work"** is defined in Recital F.
133. **"Preliminary Punch List"** is defined in Section 9.8.1.
134. **"Prime Rate"** is defined in Section 20.8.
135. **"Private Utilities"** means sewer, water, gas and electricity lines within the Expansion Site and owned by private companies.
136. **"Public Works Documents"** means plans and specifications for street and sidewalk improvements in SW 18<sup>th</sup> Avenue and SW 20<sup>th</sup> Avenue as required by the City in its regulatory capacity, including, without limitation, lighting and traffic signal improvements.
137. **"Public Objectives"** is defined in Section 4.
138. **"Punch List"** is defined in Section 9.8.1.
139. **"RDA"** is defined in Recital B.
140. **"Reasonable Efforts"** means the taking, in good faith, of reasonable actions under the circumstances presented to accomplish an objective, whether or not the objective sought is accomplished. With respect to the City, the notion of reasonable actions allows the City to take into

account adopted statutes, ordinances, policies, and goals, to the extent reasonably applicable to the Expansion and consistently applied.

141. **"Reasonable Efforts Response Period"** is defined in Section 6.1.3.
142. **"Recital"** or **"Recitals"** means one or all, as applicable, of the recitals listed at the beginning of the Agreement.
143. **"Related Dispute Resolution"** is defined in Section 11.1.2.
144. **"Release"** means a release of Environmental Hazards at, in, on or under the Expansion Site or the Stadium which exceeds minimum cleanup levels under applicable environmental laws.
145. **"Remediation Work"** means the actions necessary to complete the Environmental Remediation.
146. **"Required Approval"** is defined in Section 8.3.
147. **"Resolution"** is defined in Recital C.
148. **"Restoration"** is defined in Section 14.2.
149. **"Retained Party"** is defined in Section 3.2.1.
150. **"Retained Party Contract"** means a contract between Peregrine and a Retained Party and any and all amendments thereto.
151. **"Retained Party Contract Requirements"** is defined in Section 3.2.5 and are set forth in Exhibit 3.2.5.
152. **"Specifications"** are that portion of the Construction Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Expansion Improvements, and performance of related services.
153. **"Stadium"** is defined in Recital A.
154. **"Subcontractor"** means any subcontractor of a Retained Party, and any of their subcontractors' subcontractors.
155. **"Substantial Completion"** or **"Substantially Complete"** means the stage in the progress of the Expansion Improvements when the Expansion Improvements or designated portion thereof are sufficiently complete in accordance with the Drawings and Specifications so that Peregrine can occupy or utilize the Expansion Improvements for its intended use and a temporary certificate of occupancy for the Expansion Improvements has been issued by the appropriate governmental authority.
156. **"Substantial Portion"** is defined in Section 15.1.
157. **"Supplemental Environmental Assessment"** is defined in Section 6.1.3.
158. **"Taking"** is defined in Section 15.1.

159. **"Taking Date"** is defined in Section 15.1.
160. **"TC Line"** is defined in Section 3.5.1.
161. **"Term"** means the duration of the Agreement, which shall commence as of the Effective Date and shall terminate pursuant to Section 17.
162. **"Termsheet Amendment"** is defined in Recital E.
163. **"Thorns"** is defined in Recital A.
164. **"Timbers"** is defined in Recital A.
165. **"UCC Financing Statements"** means written financing statements filed by Peregrine in favor of the City, granting the City a security interest in the Retained Party Contracts and complying with ORS 79.4020.
166. **"Unforeseeable Conditions"** means concealed physical conditions at the Expansion Site that materially differ from those indicated in the Construction Documents of which Peregrine was not aware and should not have reasonably been aware or anticipated based on known conditions, and that materially and adversely impact the Expansion Schedule.
167. **"Violation"** is defined in the Good Neighbor Agreement.
168. **"Warranties"** means all obligations of Peregrine's professionals and contractors, and of their respective subcontractors and suppliers, as set forth in Retained Party Contracts, to repair, replace, or remedy any portion of the Expansion Improvements which is defective or otherwise does not conform or comply with the requirements of the 100% Construction Drawings or does not perform as promised, including but not limited to any express warranties, contract rights, causes of action, or implied warranties benefiting the City or Peregrine.
169. **"Work"** means the scope of work of a Retained Party under the relevant Retained Party Contract.
170. **"Wrap"** is defined in Section 13.



**EXHIBIT 2.3**  
**EXCLUSIVE USE AND GUARANTY**

To be attached.

After Recording Return to:  
Radler White Parks & Alexander LLP  
111 SW Columbia Street, Suite 700  
Portland, OR 97201  
Attn: Dina Alexander

**MEMORANDUM OF EXPANSION REDEVELOPMENT AGREEMENT**

**PARTIES:** CITY OF PORTLAND, ("City")  
a municipal corporation of the State of Oregon  
1120 S.W. Fifth Avenue, 12th Floor  
Portland, Oregon 97204  
Attn: Chief Administrative Officer

PEREGRINE SPORTS, LLC, ("Peregrine")  
a Delaware limited liability company  
1844 S.W. Morrison  
Portland, Oregon 97205  
Attn: Merritt Paulson

This Memorandum of Expansion Redevelopment Agreement is executed, delivered, and recorded to give notice of the fact that the City and Peregrine have entered into that Expansion Redevelopment Agreement dated \_\_\_\_\_, 2017, which affects the property described on attached Exhibit A.

IN WITNESS WHEREOF, the parties have executed and delivered this Memorandum.

**CITY:** CITY OF PORTLAND, OREGON,  
a municipal corporation of the State of Oregon


By: \_\_\_\_\_  
Printed Name: Tom Rinehart  
Title: Chief Administrative Officer

Approved as to form:

By: \_\_\_\_\_  
City Attorney

PEREGRINE:

PEREGRINE SPORTS, LLC,  
a Delaware limited liability company

By:   
Printed Name: Henry Merritt Paulson, III  
Title: Manager

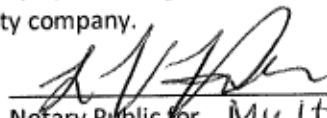
STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Tom Rinehart as Chief Administrative Officer of the City of Portland, a municipal corporation of the State of Oregon, on behalf of the City.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH    )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2017, by Henry Merritt Paulson, III, as Manager of Peregrine Sports, a Delaware limited liability company, on behalf of the limited liability company.

  
\_\_\_\_\_  
Notary Public for Multnomah County  
My Commission Expires: January 29, 2018

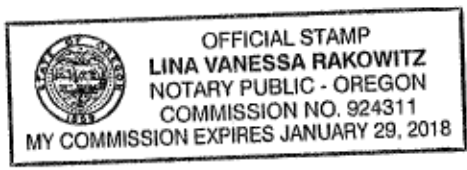




EXHIBIT A

Legal Description

A parcel of land in Section 33, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more fully described as follows:

Commencing at the Southwest corner of Block 5, Southeasterly portion of Amos N. King's Land Claim, recorded April 8, 1871, Multnomah County Plat Records, said point being also the intersection of the Easterly line of S.W. 20th Avenue (formerly Stout Street) with the Northerly line of S.W. Salmon Street (formerly West Salmon Street); thence Northeasterly along the Easterly line of S.W. 20th Avenue to a point in a line drawn 240.17 feet Northerly of and parallel with the Northerly line of S.W. Salmon Street when measured at right angles thereto, said point being also the true point of beginning of the parcel to be described; thence Northwesterly along the Northwesterly extension of said parallel line to an intersection with the center line of S.W. 20th Avenue 60 feet in width; thence Northeasterly along the center line of S.W. 20th Avenue to its intersection with the center line of S.W. Morrison Street 60 feet in width; thence Southeasterly along the center line of S.W. Morrison Street (formerly West Morrison Street) to its intersection with a line drawn 50.00 feet Easterly of and parallel with the Westerly line of S.W. 18th Avenue as now laid out and established 90 feet in width, said parallel line being also the center line of 14th Street as shown on the map of part of Ruth A. Semple's portion of the Nancy Lounsdale Donation Land Claim to the City of Portland, recorded May 23, 1873, in Book 2, at Page 45, Multnomah County Plat Records; thence Southwesterly along said parallel line to its intersection with a line drawn 240.17 feet Northerly of and parallel with the Easterly extension of the Northerly line of S.W. Salmon Street as now established 60 feet in width in the Southeasterly portion of Amos N. King's Land Claim, when measured at right angles thereto; thence Northwesterly along said parallel line to a point in the Easterly line of S.W. 20th Avenue, said point being also the point of beginning, subject to the rights of the public in and to that portion of the hereinabove described parcel now in street.

EXCEPTING that portion conveyed unto Tri County Metropolitan Transportation District of Oregon by Deed recorded February 14, 1994 as Recorder's Fee No. 94-025360.

TOGETHER WITH those certain easements granted by Multnomah Athletic Club in Amended and Restated Easement Agreement and Right of First Refusal and recorded March 10, 2010, Fee No. 2010-031885, Multnomah County Deed Records.

**EXHIBIT 2.5**  
**EXPANSION COMPLETION GUARANTY**

To be attached.

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## Exhibit 3.2.1 Approved Retained Parties and Retained Party Contracts - Part 1

| <b>Function</b>                         | <b>Approved Retained Parties</b>            | <b>Approved Contract</b> |
|---|---|--------------------------|
| <b>Project Management</b>               | ICON Venue Group<br>Nelson Capitol CPM, LLC |                          |
| <b>Architect</b>                        | Allied Works Partnership                    | Approved                 |
| Lighting Design                         | ME Engineers, Inc.                          |                          |
| Structural Engineer                     | KPFF  |                          |
| Mechanical, Electrical, Plumbing Design | Glumac                                      |                          |
| <b>General Contractor</b>               | Turner Construction Co                      | Approved                 |
| Micropile Foundation System             | DBM Contractors, Inc.                       |                          |
| Surveying                               | KPFF  |                          |
| Surveying                               | Statewide Land Surveying                    |                          |
| Surveying                               | Terracalc Land Surveying, Inc.              |                          |
| Surveying                               | W.B. Wells & Associates Inc.                |                          |
| Surveying                               | Westlake Consultants, Inc.                  |                          |
| Surveying                               | WHPacific                                   |                          |
| Temporary Scaffolding & Platforms       | Northwest Scaffold Service                  |                          |
| Temporary Scaffolding & Platforms       | Safway Services                             |                          |
| Demolition                              | Green Deconstruction Services, Inc.         |                          |
| Demolition                              | Konell Construction & Demolition            |                          |
| Demolition                              | Laneco, Inc.                                |                          |
| Demolition                              | NorthStar CG, LP.                           |                          |
| Demolition                              | Northwest Demolition & Dismantling          |                          |
| Demolition                              | Performance Contracting Group               |                          |
| Demolition                              | Staton Companies                            |                          |
| Concrete                                | CalPortland                                 |                          |
| Concrete                                | Knife River                                 |                          |
| Concrete                                | Cemex                                       |                          |
| Concrete                                | Ross Island                                 |                          |
| Cast in Place Forming                   | Aluma                                       |                          |
| Cast in Place Forming                   | Peri  |                          |
| Cast in Place Concrete                  | Brundage Bone                               |                          |
| Cast in Place Concrete                  | Ralphs                                      |                          |
| Rebar                                   | Farwest                                     |                          |
| Rebar                                   | BarM  |                          |
| Structural Steel & Metal Fabrications   | Carron Western Constructors, Inc.           |                          |
| Structural Steel & Metal Fabrications   | Carr Construction, Inc.                     |                          |
| Structural Steel & Metal Fabrications   | Corona Steel, Inc.                          |                          |
| Structural Steel & Metal Fabrications   | Fought & Company                            |                          |



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## Exhibit 3.2.1 Approved Retained Parties and Retained Party Contracts - Part 2

| <b>Function</b>                       | <b>Approved Retained Parties</b>      | <b>Approved Contract</b> |
|---------------------------------------|---------------------------------------|--------------------------|
| Structural Steel & Metal Fabrications | REFA Erection, Inc.                   |                          |
| Structural Steel & Metal Fabrications | RF Stearns, Inc.                      |                          |
| Structural Steel & Metal Fabrications | S&M Steel Fab                         |                          |
| Structural Steel & Metal Fabrications | Sowles Company                        |                          |
| Structural Steel & Metal Fabrications | T-Plus Steel Fabricators, Inc.        |                          |
| Waterproofing & Damproofing           | D&R Masonry Restoration, Inc.         |                          |
| Waterproofing & Damproofing           | McDonald & Wetle                      |                          |
| Waterproofing & Damproofing           | Pioneer Waterproofing                 |                          |
| Waterproofing & Damproofing           | Sawtooth Caulking, Inc.               |                          |
| Membrane Roofing                      | ABC Roofing                           |                          |
| Membrane Roofing                      | Cobra BEC Inc.                        |                          |
| Membrane Roofing                      | Roof Toppers, Inc.                    |                          |
| Membrane Roofing                      | Umpqua Roofing Company, Inc.          |                          |
| Flashing & Misc. Sheet Metal          | Browns Architectural Sheet Metal Inc. |                          |
| Flashing & Misc. Sheet Metal          | General Sheet Metal Works, Inc.       |                          |
| Flashing & Misc. Sheet Metal          | Martin Sheet Metal Inc.               |                          |
| Flashing & Misc. Sheet Metal          | Pioneer Sheet Metal                   |                          |
| Flashing & Misc. Sheet Metal          | Skyline Sheet Metal, Inc.             |                          |
| Flashing & Misc. Sheet Metal          | Streimer Sheet Metal                  |                          |
| Doors, Frames, & Hardware             | American Direct                       |                          |
| Doors, Frames, & Hardware             | Baxter & Flaming Industries           |                          |
| Doors, Frames, & Hardware             | Bell Hardware - Portland              |                          |
| Doors, Frames, & Hardware             | Building Material Specialties, Inc.   |                          |
| Doors, Frames, & Hardware             | Chown Inc.                            |                          |
| Doors, Frames, & Hardware             | Gibson Door & Millwork, Inc.          |                          |
| Doors, Frames, & Hardware             | JS Perrott & Co.                      |                          |
| Glass & Glazing                       | Allstar Glass                         |                          |
| Glass & Glazing                       | Benson Industries, Inc.               |                          |
| Glass & Glazing                       | Culver Glass Co.                      |                          |
| Glass & Glazing                       | Dallas Glass                          |                          |
| Glass & Glazing                       | Encore Glass Pacific NW Door & Glass  |                          |
| Glass & Glazing                       | Heritage Glass, Inc.                  |                          |
| Glass & Glazing                       | Mid Valley Glass and Millwork         |                          |
| Glass & Glazing                       | South Town Glass                      |                          |
| Glass & Glazing                       | Speedy Glass                          |                          |
| Glass & Glazing                       | Willamette Glass                      |                          |
| Interior Partitions & Ceilings        | Anning-Johnson Company                |                          |

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## Exhibit 3.2.1 Approved Retained Parties and Retained Party Contracts - Part 3

| <b>Function</b>                          | <b>Approved Retained Parties</b>      | <b>Approved Contract</b> |
|--|---------------------------------------|--------------------------|
| Interior Partitions & Ceilings           | Cascade Acoustics                     |                          |
| Interior Partitions & Ceilings           | Fred Shearer & Sons, Inc.             |                          |
| Interior Partitions & Ceilings           | Harlen's Drywall                      |                          |
| Interior Partitions & Ceilings           | Interior/ Exterior Specialists        |                          |
| Interior Partitions & Ceilings           | Performance Contracting Inc           |                          |
| Interior Partitions & Ceilings           | The Harver Company                    |                          |
| Interior Partitions & Ceilings           | Western Partitions, Inc.              |                          |
| Flooring                                 | Contract Flooring & Interiors         |                          |
| Flooring                                 | Don Frank Floors                      |                          |
| Flooring                                 | Floor Factors, Inc.                   |                          |
| Flooring                                 | Floor Solutions                       |                          |
| Flooring                                 | Pure Floors Inc.                      |                          |
| Flooring                                 | ReSource Maintenance & Flooring, Inc. |                          |
| Flooring                                 | Spectra Contract Flooring             |                          |
| Flooring                                 | Thomas Kay Flooring                   |                          |
| Painting                                 | Don Rhyne Painting                    |                          |
| Painting                                 | Holland Painting                      |                          |
| Painting                                 | Hunt Painting                         |                          |
| Painting                                 | Lions Painting and Construction       |                          |
| Painting                                 | River City Painting                   |                          |
| Painting                                 | Schiller & Vroman                     |                          |
| Painting                                 | Siegner and Company                   |                          |
| Painting                                 | W. E. Given Contracting, Inc.         |                          |
| Painting                                 | WB Painting & Decorating, Inc.        |                          |
| Toilet Partitions & Bathroom Accessories | Academy Specialties LLC               |                          |
| Toilet Partitions & Bathroom Accessories | Building Specialties NW               |                          |
| Toilet Partitions & Bathroom Accessories | RC Building Specialties LLC           |                          |
| Toilet Partitions & Bathroom Accessories | W.H. Cress Co. Inc.                   |                          |
| Tensioned Fabric Structures              | Birdair Inc.                          |                          |
| Tensioned Fabric Structures              | FabriTech Structures                  |                          |
| Tensioned Fabric Structures              | Structurflex                          |                          |
| Elevators                                | KONE Inc.                             |                          |
| Elevators                                | Otis Elevator                         |                          |
| Elevators                                | Schindler Elevator                    |                          |
| Elevators                                | ThyssenKrupp Elevator                 |                          |
| Fire Protection                          | Basic Fire Protection, Inc.           |                          |
| Fire Protection                          | Cosco Fire Protection                 |                          |
| Fire Protection                          | Delta Fire, Inc.                      |                          |
| Fire Protection                          | Patriot Fire Protection, Inc.         |                          |

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**Exhibit 3.2.1 Approved Retained Parties and Retained Party Contracts - Part 4**

| <b>Function</b>       | <b>Approved Retained Parties</b>        | <b>Approved Contract</b> |
|-----------------------|---|--------------------------|
| Fire Protection       | Western States Fire Protection Co       |                          |
| Plumbing              | Alliant Systems                         |                          |
| Plumbing              | American Heating, Inc.                  |                          |
| Plumbing              | Apollo Mechanical Contractors           |                          |
| Plumbing              | Charter Mechanical Contractors, Inc.    |                          |
| Plumbing              | J.H. Kelly                              |                          |
| Plumbing              | McKinstry                               |                          |
| Plumbing              | TCM Corp                                |                          |
| HVAC                  | Alliant Systems                         |                          |
| HVAC                  | American Heating, Inc.                  |                          |
| HVAC                  | Apollo Mechanical Contractors           |                          |
| HVAC                  | Arctic Sheet Metal, Inc.                |                          |
| HVAC                  | General Sheet Metal Works, Inc.         |                          |
| HVAC                  | McKinstry                               |                          |
| HVAC                  | Piper Mechanical                        |                          |
| HVAC                  | Streimer Sheet Metal                    |                          |
| HVAC                  | TCM Corp                                |                          |
| Electrical            | Affordable Electric Inc.                |                          |
| Electrical            | Cherry City Electric                    |                          |
| Electrical            | Dynalectric                             |                          |
| Electrical            | E C Company, Electrical Construction Co |                          |
| Electrical            | Global Electric Inc.                    |                          |
| Electrical            | Liberty Electric, LLC                   |                          |
| Electrical            | On Electric Group                       |                          |
| Electrical            | ONeill Electric, Inc.                   |                          |
| Electrical            | Stoner Electric Group                   |                          |
| Electrical            | Tice Electric                           |                          |
| Electrical            | Mass Electric Construction Company      |                          |
| Earthwork & Utilities | Coffman Excavation                      |                          |
| Earthwork & Utilities | Dewitt Construction Inc.                |                          |
| Earthwork & Utilities | Kerr Contractors, Inc.                  |                          |
| Earthwork & Utilities | Nutter Corporation                      |                          |
| Earthwork & Utilities | TFT Construction, Inc.                  |                          |
| Earthwork & Utilities | Weitman Excavation                      |                          |
| Earthwork & Utilities | Westech Construction                    |                          |
| Cranes & Hoists       | Cascade Tower & Rigging, Inc.           |                          |
| Cranes & Hoists       | Lindenm Comansa                         |                          |
| Cranes & Hoists       | Morrow Equipment Company, L.L.C.        |                          |
| Cranes & Hoists       | Ness & Campbell Crane                   |                          |
| Cranes & Hoists       | Northwest Tower Crane Service           |                          |



## EXHIBIT 3.2.5

**PGE PARK STADIUM REDEVELOPMENT AGREEMENT  
RETAINED PARTY CONTRACT REQUIREMENTS****All Retained Party Contracts shall contain the following provisions:**

1. Unless otherwise stated in the Retained Party Contract, and approved by the City Attorney in writing, all work product produced and all work incorporated in the Project Site shall be owned by the City; provided, however, all drawings, specifications, and any other documents prepared by Retained Parties that are architects, engineers or other professional services consultants for the Project (collectively, "Design Documents") shall be owned by the City and Peregrine. Any rights granted the Architect to use all or certain Design Documents for public relations, publication, and exhibition purposes shall be as set forth in the Architectural Services Agreement approved by Peregrine and the City;
2. All Retained Parties that perform construction shall take all safety measures reasonably appropriate and necessary to (a) protect all persons at and about the Project Site from injury or damage caused by or resulting from the performance of construction; (b) protect the work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; (c) protect other property at the Stadium or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; (d) give all notices and comply with applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss; (e) erect and maintain reasonable safeguards for safety and protection, including installation of barriers and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying users of the Stadium and adjacent sites and utilities; (f) comply with the Contractor's and Retained Party's written safety program for the Project; and (g) when use or storage of explosives or other Environmental Hazards or equipment or unusual methods are necessary for execution of the work, exercise utmost care and carry on such activities under supervision of properly qualified personnel. All Retained Parties that do not perform construction shall comply with the safety program for the Project when at or about the Project Site;
3. The Retained Party shall participate in and comply with Dispute Resolution provisions consistent with this Agreement;
4. The Retained Party shall participate in and comply with City right to suspend and carry out work as provided in this Agreement;
5. The Retained Party shall be certified as an EEO employer pursuant to PCC 3.100.041, and shall require all subcontracts to be awarded to EEO certified employers.
6. The Retained Party shall comply with PCC 3.100.053, and the City's implementing administrative rules all of which are incorporated by this reference, prohibiting discrimination by policy or in practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules.

{00709387;4}

7. In compliance with PCC 7.02 (City Business License Code), the Retained Party shall obtain and maintain a business license from the City of Portland, and shall require all subcontractors to comply with the City Business License Code.
8. The City shall be a third-party beneficiary with the right to enforce the Retained Party Contract;
9. The Retained Party shall indemnify the City from all Environmental Remediation Costs and City damages caused by the Release of Environmental Hazards by such Retained Party, its employees, agents, or independent contractors;
10. All indemnification clauses shall name the City as an indemnified party;
11. The Retained Party shall maintain, and the City shall have access to, the books, documents, papers, and records of the Retained Party that are directly pertinent to the Retained Party Contract and the Project. The City shall have the right to conduct an audit of such books, documents, papers, and records for a period of three (3) years after final payment under the Retained Party Contract;
12. The Retained Party shall comply with all applicable federal, state, and local Laws and regulations;
13. The Retained Party shall defend, save, and hold harmless the City of Portland, its officers, agents and employees from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the negligent activities of Retained Party or its subcontractors, agents, or employees under the Retained Party Contract;
14. The Retained Party shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees from all claims, suits, or actions arising out of the negligent acts, errors, or omissions of Retained Party, or its subcontractors and sub-consultants, agents, or employees in its performance of its services under the Retained Party Contract;
15. The Retained Party agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, regulations, and any other Laws. The Retained Party shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those Laws.
16. The Retained Party Contract shall be governed by the laws of the State of Oregon, without reference to its conflict of law provisions. Any action or suit involving any question arising under the Retained Party Contract must be brought in the appropriate court in Multnomah County, Oregon;
17. The Retained Party shall timely pay all consultants, suppliers, lessors, and contractors providing it services, materials, or equipment for carrying out its obligations under the Retained Party Contract. The Retained Party shall not take or fail to take any action in a manner that causes the City or any materials that the Retained Party provides under the Retained Party Contract to be subject to any claim or lien of any person without the City's prior written consent;
18. All warranties provided by the Retained Party must be assignable to the City in the case of a Peregrine Event of Default;
19. All Retained Party Contracts shall be approved by the City in writing;

{00709387;4}

20. City's review, comment, or approval of Retained Party Contracts, of any documentation or data submitted by a Retained Party, or of any work performed by a Retained Party shall not excuse any party to the Retained Party Contract from strict performance of its obligations under the Retained Party Contract, nor render the City liable to any such party as a result of such review, comment, or approval;
21. Retained Parties shall be available for access by the City Representative and its agents to answer questions and provide information; and
22. With respect to insurance, the Retained Party shall maintain in force the insurance coverage required by Section 13 of this Agreement.



**EXHIBIT 8.2.1  
EXISTING FF&E**

To be attached post execution.

**EXHIBIT 8.2.2**  
**New FF&E (1)**

- Assisted Listening Devices
  - Assisted Viewing System
  - ADA Companion Seating
  - Advertising Panels/Signage
  - Audio System
  - Video System
  - Baby Changing Stations
  - Carts
  - Crowd Control Devices
  - Soccer Field Boards and Equipment
  - Toilet Accessories
  - Window Washing Equipment
  - Ticketing Equipment
  - Chairs and Furnishings
  - Medical Equipment
  - Window Coverings
  - Foodservice Equipment
  - Communication Systems
  - Maintenance/Engineer Tools & Equipment
  - Storage Systems
  - Drinking Fountains
- 

*(1) This is a preliminary list and subject to change.*

**Exhibit 9.8.3(a)**  
**DOCUMENTS REQUIRED FOR FINAL COMPLETION**

1. Final and full waivers duly executed waivers of mechanics', materialmen's and construction liens from the Contractor, Retained Parties, and all subcontractors with a contract value in excess of \$10,000 (each, a "Major Subcontractor"), establishing payment or satisfaction of all amounts due with respect to the Expansion Improvements, which shall also include unconditional waivers and releases of all claims relating to the Expansion or the Expansion Site, including the right to claim against the payment bond for the Expansion, with respect to the payment requested by the Contractor in the Application for Payment;
1. A final Certificate for Payment issued by the Architect and the Developer's Representative (including the Architect's certification that all Punch List items have been completed);
2. A copy of all required certificates of occupancy for the Expansion;
3. Two duplicate sets of as-built Drawings and a CD containing the Drawings for submission to the City;
4. An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Expansion for which the Peregrine or the City might be responsible or encumbered (less amounts withheld by Peregrine) have been paid or otherwise satisfied. This paragraph does not establish a requirement for certified payroll;
5. A certificate evidencing that insurance required by this Agreement or the Retained Party Agreements to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City;
6. A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Agreement or the Retained Party Agreements;
7. If required by Peregrine, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Peregrine;
8. Evidence that all claims of lien, if any, recorded against the Property have been discharged;
9. All manuals including equipment operation and maintenance manuals and written warranties required to be provided by the Contractor, subcontractors, or sub-subcontractors; and
10. All other deliverables required under the General Construction Contract.



EXHIBIT 9.8.3(b)

CERTIFICATION BY CONTRACTOR

The undersigned ("Contractor") certifies that as of the date of this certification:

- a) All work required by the Agreement Between Owner and Contractor between Peregrine Sports LLC, a Delaware limited liability company ("Peregrine"), as owner, and Contractor, as general contractor, and the General Conditions for the Contract for Construction, (collectively, the "Contract") is complete;
- b) All amounts due for labor, materials and all other obligations under the Contract have been paid by Peregrine;
- c) All actions for injuries or damages arising out of its operations and work were fully and finally settled, or are fully covered by insurance protecting the Contractor, the City of Portland, its officers, agents and employees, and any additional insureds required by the Contract; and
- d) Any claim brought against the Contractor by an employee, subcontractor, or supplier has been fully and finally settled, or if not resolved, is fully covered and payable by the Contractor, in the event that such claim is correct.

\_\_\_\_\_  
 Signature  
 Turner Construction Company  
[Click Here and Type Address](#)  
[Click Here and Type City/State/Zip](#)

\_\_\_\_\_  
 Title

State of \_\_\_\_\_ )  
 )ss:  
 County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_ (date),  
 by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of  
 \_\_\_\_\_ ( company).

\_\_\_\_\_  
 NOTARY PUBLIC FOR \_\_\_\_\_ (State)  
 My Commission Expires:

EXHIBIT 10.1  
Expansion Schedule

| <b>Activity</b>                                       | <b>Schedule (1)</b>    |
|---|------------------------|
| Conceptual/Schematic Design                           | 12/1/2016 - 2/10/2017  |
| Design Development and Construction Documents Phase 1 | 2/2/2017-8/9/2017      |
| City of Portland Design Review Approval               | 7/21/2017 - 8/3/2017   |
| City of Portland Permitting Phase 1                   | 8/9/2017 - 12/13/2017  |
| City of Portland – Phase 1 Partial Permit             | 11/21/2017             |
| GMP Phase 1   | 10/23/2017             |
| Notice To Proceed with Phase 1                        | 11/10/2017             |
| Construction Phase 1                                  | 11/10/2017 - 4/5/2018  |
| Construction Documents Phase 2                        | 8/9/2017 - 2/2/2017    |
| GMP Phase 2   | 4/1/2018               |
| Construction Phase 1B                                 | 4/5/2018 - 10/22/2018  |
| Construction Phase 2                                  | 10/22/2018 - 4/26/2019 |
| Substantial Completion                                | 4/27/2019              |
| Final Completion                                      | 6/28/2019              |

(1) Subject to change.

## EXHIBIT 12.1

**QUALIFICATIONS AND INDEMNIFICATIONS RELATING TO CITY'S REPRESENTATIONS AND WARRANTIES**

The City's representations and warranties contained in Section 12.1 are qualified as follows:

1. No representation or warranty is made regarding the effect on the enforceability of the this Agreement or the Related Agreements of federal or state Laws regarding regulation of competition, or the compliance with such Laws.

2. [Intentionally Omitted.]

3. (a) The validity and enforceability of the Operating Agreement may be limited by the application of Section 2-105(a)(3) of the City Charter.

(b) The validity and enforceability of this Agreement and the Related Agreements other than the Operating Agreement may also be limited by the application of Section 2-105(a)(3) of the City Charter. The City will defend, indemnify and hold Peregrine and its successors and assigns harmless from and against any damage, claim or liability, including consequential damages, arising out of any challenge to the validity and enforceability of this Agreement and the related Agreements other than the Operating Agreement based upon Section 2-105(a)(3) of the City Charter by any person other than Peregrine.

4. The validity and enforceability of this Agreement and the Operating Agreement may be limited by the U.S. Constitution and the Oregon Constitution to the extent they afford citizens rights of speech and assembly at publicly-owned facilities.

5. To fully redevelop the Stadium as contemplated in this Agreement and Related Agreements, it will be necessary for Peregrine to obtain discretionary land use approvals, building permits and other regulatory approvals. None of the City statements in Section 12.1 of this Agreement constitutes a representation or warranty that the City will exercise its legislative or quasi-judicial authority in a manner that guarantees a certain outcome. As stated elsewhere in this Agreement, this Agreement and Related Agreements do not bind the City Council in the exercise of its legislative powers and do not impair the City's obligation to perform its regulatory or quasi-judicial functions in an impartial and unbiased manner.

6. As recognized in this Agreement and Related Agreements, it will be necessary to reach or modify agreements with various third parties in order to develop the Stadium as contemplated. None of the City statements in Section 12.1 of this Agreement are intended to constitute a representation or warranty that such agreements or modifications have been accomplished or can be.



1    **SECTION 8**     DESIGN AND CONSTRUCTION DOCUMENTS

2                   **8.1 Design Contracts and Ownership of Design Documents**

3                    **8.1.1** Any fees or expenses under any Retained Party Contracts for the design and  
4 architecture of the Expansion Improvements shall be borne solely by Peregrine.

5                    **8.1.2** All drawings, specifications, and any other documents prepared by Retained  
6 Parties that are architects, engineers, or other professional services consultants for the Expansion  
7 (collectively, "Design Documents") shall be owned by the City and Peregrine. Peregrine shall require in its  
8 contracts with such Retained Parties that the Retained Parties not use the Design Documents for any other  
9 project without the prior written consent of the City and Peregrine. As to those Design Documents or any  
10 portion thereof not transferred, or the transfer of which is held unenforceable, Peregrine shall cause any  
11 such Retained Parties to grant to Peregrine and the City a paid-up, non-exclusive, world-wide, irrevocable,  
12 transferable license, for Peregrine and the City to use, reproduce, and have reproduced the Design  
13 Documents, and for Peregrine and the City to allow others to use, reproduce, and have reproduced, such  
14 Design Documents in performing services of construction for the Project and otherwise in connection with  
15 the Stadium. Submittals or distributions necessary to meet official regulatory requirements or for other  
16 purposes relating to completion of the Expansion are not to be construed as a publication in derogation  
17 of the Parties' reserved rights. Peregrine shall cause all Retained Party Contracts related to the  
18 preparation of Design Documents to expressly acknowledge the Parties' rights under this Section.

19                   **8.2 FF&E**

20                    **8.2.1 Existing FF&E.** The Expansion Improvements include existing furniture, movable  
21 fixtures, and equipment in the Stadium, all of which will be listed on Exhibit 8.2.1 and attached to this  
22 Agreement no later than December 31, 2017 (the "Existing FF&E"). The Existing FF&E falls into categories,  
23 each a separate column on Exhibit 8.2.1: the Existing FF&E which will remain at the Stadium or be stored  
24 elsewhere during construction, which is shown in column 1; the Existing FF&E which Peregrine has agreed  
25 to remove from the Stadium, which is shown in column 2; and the surplus equipment which is the property  
26 of City and may be sold or otherwise disposed of by the City in its sole discretion, which is shown in column  
27 3. The items listed in column 2 of Exhibit 8.2.1 will be disposed of by Peregrine in accordance with  
28 applicable Laws. With respect to the Existing FF&E that will remain at the Stadium, the City hereby grants  
29 Peregrine a license to use this Existing FF&E throughout the term of the Operating Agreement.

30                    **8.2.2 New FF&E.** The Expansion Improvements also include new furniture, fixtures, and  
31 equipment, generally anticipated as those items listed on the attached Exhibit 8.2.2 (the "New FF&E").  
32 Peregrine agrees to acquire, at its sole cost, the New FF&E as necessary to Substantially Complete the  
33 Expansion Improvements. Before Peregrine purchases New FF&E, Peregrine will provide the City with  
34 detail sufficient for the City to determine what is to be acquired and that such New FF&E will satisfy its  
35 intended purpose (e.g. manufacturer and model number). Such detailed inventory will be approved by  
36 the City using the process in Section 8.3 and may be reviewed and approved on a rolling basis as New  
37 FF&E is purchased. By no later than Final Completion, Peregrine shall provide the City a final detailed  
38 inventory of the New FF&E and the values of such New FF&E. The New FF&E will be owned by the City,  
39 will be located at the Stadium and not used elsewhere, and will be used, maintained, and operated subject  
40 to the terms of the Operating Agreement. With respect to the New FF&E, the City hereby grants Peregrine  
41 a license to use this New FF&E throughout the term of the Operating Agreement.

1           **8.3 Required Approvals**

2           The provisions of this Section 8.3 set forth the procedure for preparation by Peregrine and review  
 3 by the City, in its proprietary capacity, of plans, specifications, and construction drawings for the  
 4 Expansion Improvements (each, a "Required Approval"). These provisions are not applicable to the  
 5 regulatory procedures for application, review, and issuance of permits and approvals of the City and other  
 6 governmental organizations necessary for construction of the Expansion Improvements. Peregrine will  
 7 submit to the City's Office of Management and Finance team the indicated types and quantities of  
 8 documents listed with each Required Approval below, including digital copies in PDF format posted to the  
 9 architect's FTP site. Noted below are the anticipated target dates for submission of the document sets, as  
 10 provided to the City by Peregrine's team, and Peregrine agrees to make good faith efforts to provide the  
 11 document sets by the applicable target date. The City's deadline for approval will be the end of the  
 12 fifteenth (15th) Business Day following the Business Day on which the relevant documents are submitted;  
 13 provided, however, the City agrees to make good faith efforts to provide its reviews and approvals as  
 14 quickly as reasonably possible. Disputes regarding the reasonableness of any City disapproval of all or  
 15 portions of the Required Approval documents for any portion of the Expansion Improvements shall be  
 16 resolved in accordance with Dispute Resolution provided in this Agreement.

17           **8.3.1 Documents Reviewed Before the Effective Date.** The following documents have  
 18 already been reviewed by the City:

19                   **8.3.1.1 75% Design Development Documents and 30% Public Work Documents.**  
 20 The Architect prepared a complete set of 75% Design Development Documents for the Expansion  
 21 Improvements and submitted these to the City on June 23, 2017. The Architect also prepared 30% Public  
 22 Work Documents and submitted these to the City in early June 2017. The City sent a letter to Peregrine  
 23 on July 17, 2017, stating that it was not approving the 75% Design Development Documents or the 30%  
 24 Public Works Review Documents and providing issues to be addressed in the next round of documents.

25                   **8.3.1.2 100% Design Development Documents and 100% Construction**  
 26 **Documents for the Phase One Work.** The Architect prepared a complete set of (a) 100% Design  
 27 Development Documents for the Expansion Improvements and (b) 100% Construction Documents for the  
 28 Phase One Work, which were approved by the City on September 6, 2017.

29                   **8.3.1.3** The MLS Letter, defined in Section 4.6, has been approved by City.

30                   **8.3.1.4** Public Works Documents for SW 18<sup>th</sup> have been approved by City.

31           **8.3.2 Required Approvals After the Effective Date.** Peregrine will follow the procedure  
 32 provided in this Section 8.3 to obtain City approval of the following documents:

33                   **8.3.2.1** A complete set of 50% Construction Documents for the Phase Two Work,  
 34 which must be consistent with the City-approved 100% Design Development Documents.

35                                   Documents Required: One (1) specification, two (2) half-sized sets, and a  
 36                                   digital copy of all documents submitted for approval.

37                                   Target Submission Date: 12/1/17  
 38

1                                   **8.3.2.2** A FF&E initial proposal list of New FF&E associated with the Expansion.

2                                   Documents Required: Pursuant to Section 8.2, proposed lists of Existing  
3                                   FF&E and New FF&E to become Exhibit 8.2.1 and Exhibit 8.2.2  
4                                   respectively.

5  
6                                   Target Submission Date: Preliminary list of New FF&E shown in Exhibit  
7                                   8.2.1, future submissions on a rolling basis as provided in Section 8.2.2.

8                                   **8.3.2.3** A complete set of 100% Construction Documents for the Phase Two Work  
9                                   and the Phase Two Work Permit Submittal, which must be consistent with the City-approved 50%  
10                                   Construction Drawings (Phase Two Work).

11                                   Documents Required: One (1) full-sized set, two (2) half-sized sets, one  
12                                   (1) specification, and a digital copy of all documents submitted for  
13                                   approval.

14  
15                                   Target Submission Date: 1/2/18

16                                   **8.3.2.4** A complete set of 30% Public Works Documents for SW 20<sup>th</sup>.

17                                   Documents Required: One (1) full-sized set, two (2) half-sized sets, one  
18                                   (1) specification, and a digital copy of all documents submitted for  
19                                   approval.

20  
21                                   Target Submission Date: 12/8/17

22  
23                                   **8.3.2.5** A complete set of 60% Public Works Documents for SW 20<sup>th</sup>, which must  
24                                   be consistent with the City-approved 30% Public Works Documents.

25                                   Documents Required: One (1) half-sized set and a digital copy of all  
26                                   documents submitted for approval.

27  
28                                   Target Submission Date: 1/26/18

29                                   **8.3.2.6** A complete set of 90% Public Works Documents for SW 20<sup>th</sup>, which must  
30                                   be consistent with the City-approved 60% Public Works Documents.

31                                   Documents Required: One (1) half-sized set and a digital copy of all  
32                                   documents submitted for approval.

33  
34                                   Target Submission Date: 4/6/18

35                                   **8.3.3** Subject to the agreement of the Parties to work in good faith to mutually agree  
36                                   on reductions to the scope of the Expansion in accordance with Section 8.6.2, Dispute Resolution  
37                                   regarding the reasonableness of a disapproval of the 100% Construction Documents shall not yield a result



1 that would require the City to agree to 100% Construction Documents for the Expansion Improvements  
2 which would reduce the overall quantity or overall quality of the Expansion Improvements from the 100%  
3 Design Development Documents. The review and approval of 100% Construction Documents pursuant to  
4 this Section 8.3 shall be separate from and in addition to any regulatory review and approval process  
5 provided for under the City Codes. City approval or deemed approval of 50%, 75%, and 100% Construction  
6 Documents (or determinations under Dispute Resolution) shall not (x) constitute or be used, either  
7 directly or indirectly or in any manner or for any purpose, as an approval of or statement that the 50%,  
8 75%, or 100% Construction Documents, as applicable, are in conformance with applicable City Codes; or  
9 (y) operate or act as a waiver of any rights or remedies of the City as to any defect in the 50%, 75%, or  
10 100% Construction Documents, as applicable, or in the construction or installation of the element of  
11 Expansion Improvements to which they relate. In the event of any dispute regarding the approval of 100%  
12 Construction Documents, construction shall not commence based on the disputed portion of the 100%  
13 Construction Documents until the Dispute Resolution has been completed and the 100% Construction  
14 Documents, or disputed portion thereof, are either approved or deemed approved by the City. The Parties  
15 acknowledge and agree that in no case will the City bear responsibility for cost increases arising out of  
16 Dispute Resolution related to 100% Construction Documents.

#### 17 **8.4 Process for Required Approvals**

18 For each Required Approval, the City and Peregrine agree that:

19 **8.4.1** Documents submitted for approval will be developed by Peregrine using the City-  
20 approved Retained Parties.

21 **8.4.2** The City shall have fifteen (15) Business Days after a complete submittal of  
22 documents is received from Peregrine to review, approve, conditionally approve, or disapprove some or  
23 all of the submitted documents. The City's decisions with respect to the Required Approvals are not  
24 subject to Dispute Resolution or any judicial review. The City shall approve, conditionally approve, or  
25 disapprove, in writing, some or all of the submitted documents. If the City disapproves any submitted  
26 documents, it shall state the reasons for such disapproval.

27 **8.4.3** During any City review period, Peregrine and its Retained Parties shall be readily  
28 available to the City to respond to the City's questions and comments with respect to the documents  
29 being reviewed.

30 **8.4.4** If the City fails to approve, conditionally approve, or disapprove the documents  
31 submitted to it within such fifteen (15) Business Day period, such documents shall be deemed  
32 disapproved; provided, however, that Peregrine shall have the right, after the fifteen (15) Business Day  
33 period has passed, to demand in writing that the City approve, conditionally approve, or disapprove the  
34 documents within three (3) Business Days after receipt of the demand. Any such written demand by  
35 Peregrine shall not be effective unless it is accompanied by a clear statement from Peregrine in capital  
36 letters that failure of the City to respond within three (3) Business Days after receipt shall be deemed  
37 conditional approval of such documents. If the City fails to respond to Peregrine's demand within three  
38 (3) Business Days by approving, conditionally approving, or disapproving such documents, the documents,  
39 as submitted, shall be deemed conditionally approved.

1           **8.5 City Changes**

2           From time to time, to the extent compatible with the Expansion Schedule, the City may include  
 3 City Changes within the Expansion Improvements. The City shall give written notice to Peregrine of any  
 4 requested City Changes, and Peregrine's consent to a City Change shall not be unreasonably withheld or  
 5 delayed, but in any event Peregrine shall respond to the City's written request within ten (10) Business  
 6 Days after receipt. Peregrine may withhold its consent only if: (a) the City Change is incompatible as to  
 7 design, quality, or operating characteristics with the approved 100% CDs for Phase 1 or Phase 2; (b) the  
 8 construction or operation of the City Change would increase the net costs of the construction or operation  
 9 of the Expansion Improvements, including the costs relating to extending or altering the Expansion  
 10 Schedule, unless the City agrees to pay for any such increased costs; or (c) the City Change would cause a  
 11 material delay in the Expansion Schedule. Disputes regarding Peregrine disapproval under this Section 8.5  
 12 shall be resolved pursuant to Dispute Resolution.

13           **8.6 Responsibility for Costs; Cost Overruns**

14           **8.6.1** The City will have no obligation to contribute money to the Expansion; rather, the  
 15 entirety of the cost of the Expansion will be borne by Peregrine. Peregrine shall pay the full cost of  
 16 designing, permitting, constructing, and managing the Expansion, including any costs in excess of the  
 17 Expansion Budget, the GMP, or both (collectively, "Cost Overruns"), whether or not arising from acts or  
 18 omissions of Peregrine, and including without limitation Cost Overruns associated with substitutions,  
 19 additions, selection of alternates, increases over allowances, schedule changes, and risks of Changed  
 20 Conditions, Acts of God, Excused Delays, and regulatory changes. This Section 8.6.1 shall survive the  
 21 termination of this Agreement.

22           **8.6.2** Prior to the start of each "Construction Phase", meaning the Phase One Work or  
 23 the Phase Two Work, the scope and budget of the Expansion shall have been approved by each Party in  
 24 writing and, to the extent necessary, by the City in its regulatory capacity. If prior to starting a Construction  
 25 Phase the estimated budget for completing the Expansion exceeds the Expansion Budget, Peregrine and  
 26 the City agree to work in good faith to mutually agree on reductions to the scope of the Expansion so that  
 27 the estimated cost of the completed Expansion does not exceed the Expansion Budget, unless Peregrine  
 28 otherwise agrees to increase the Expansion Budget. The scope and budget for each Construction Phase  
 29 shall be that approved by the parties when the GMP for the Construction Phase is approved by each Party  
 30 in writing, and which shall be subject to Change Orders approved by the parties.

31           **8.6.3** Each Party shall bear its own costs of defense of any litigation filed by a third party  
 32 to challenge the validity of this Agreement, the Related Agreements, or any approvals or actions of the  
 33 City or other public body or officers in authorizing or implementing this Agreement and Related  
 34 Agreements. This Section 8.6.3 shall survive the termination of this Agreement.

35           **8.6.4** The City will pay the cost of legal and professional fees necessary to oversee the  
 36 City's interests and responsibilities during the design and construction of the Expansion.

37           **SECTION 9 CONSTRUCTION OF PROJECT IMPROVEMENTS**

38           Peregrine, at its cost and expense, will design and construct the Expansion in accordance with all  
 39 applicable Laws, rules, and regulations, including compliance with any and all ADA requirements triggered

1 by the Expansion. Peregrine will be responsible for entering into the General Construction Contract for  
2 and managing the construction of the Expansion with the Retained Parties.

### 3 9.1 Contract With General Contractor, License

4 9.1.1 Peregrine agrees to enforce the General Construction Contract for the benefit of  
5 the City and to promptly notify the City of any material breach of the General Construction Contract by  
6 the Contractor or any circumstances which with only the passage of time would constitute a material  
7 breach of the General Construction Contract.

8 9.1.2 The General Construction Contract will have a guaranteed maximum price  
9 ("GMP").

10 9.1.3 Peregrine, at its cost and expense, shall obtain any and all contractor or developer  
11 licenses required by applicable Laws. Peregrine shall provide the City with copies of any and all such  
12 licenses obtained.

### 13 9.2 Expansion Improvements

14 9.2.1 Peregrine shall construct or cause the construction of the Expansion  
15 Improvements, in a good and workmanlike manner, in accordance with the 100% Construction  
16 Documents and before the Final Completion Date, subject only to Excused Delays or breaches by the City  
17 under this Agreement or any of the Related Agreements. The Expansion shall be performed in accordance  
18 with the standards and requirements related to Restoration of the Stadium set forth in Section 12.4 of the  
19 Operating Agreement.

20 9.2.2 Peregrine shall be responsible for securing all necessary approvals, consents, and  
21 permits for the design and construction of the Expansion Improvements. In accordance with the  
22 Expansion Schedule, Peregrine shall obtain on behalf of the City all occupancy, use, and operation permits  
23 from the City or any of its departments or agencies required to be obtained for the Expansion  
24 Improvements, and such other licenses, permits, and similar authorizations from governmental  
25 authorities having jurisdiction over the Expansion Improvements as may be necessary. The City will  
26 cooperate with and assist Peregrine in obtaining, and shall join in any application for mutually agreed  
27 upon licenses, permits, and similar authorizations for the Expansion Improvements, where the City must  
28 sign the application in order for the application to be complete.

29 9.2.3 The work of building the Expansion Improvements includes incorporation of new  
30 structural elements and building systems into an existing structure. Peregrine shall be responsible for  
31 ensuring that the elements, structures, and systems of the Expansion Improvements designed and  
32 constructed by the Retained Parties are consistent with and are properly integrated with all other  
33 elements, structures, and systems of the Stadium, and to ensure that these facilities when completed will  
34 function properly in an integrated manner with the existing Stadium and in accordance with Laws and the  
35 requirements of this Agreement.

36 9.2.4 Peregrine shall, and shall make Reasonable Efforts to cause all Retained Parties  
37 to, take all safety measures reasonably appropriate and necessary to protect: (a) all persons at and about  
38 the Stadium from injury or damage caused by or resulting from the performance of construction of the  
39 Expansion Improvements; (b) the work and materials and equipment to be incorporated therein, whether  
40 in storage at the Stadium or offsite; and (c) other property at the Stadium or adjacent thereto, such as



1 trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal,  
2 relocation, or replacement in the course of construction. Peregrine shall, and shall cause all Retained  
3 Parties to, (x) give all notices and comply with applicable Laws bearing on safety of persons or property or  
4 their protection from damage, injury, or loss and (y) erect and maintain reasonable safeguards for safety  
5 and protection, including installation of barriers and posting danger signs and other warnings against  
6 hazards, promulgating safety regulations and notifying users of the Stadium and adjacent sites and  
7 utilities. Peregrine shall cause the Contractor to prepare and submit to the City a written safety program  
8 for the Expansion prior to Contractor's entry into the Stadium. When use or storage of explosives or other  
9 Environmental Hazards or equipment or unusual methods are necessary for execution of the work,  
10 Peregrine shall cause the Retained Parties to exercise utmost care and carry on such activities under  
11 supervision of properly qualified personnel. Peregrine shall, at its sole expense, promptly remedy any  
12 damage or loss (other than damage or loss insured under property insurance required under this  
13 Agreement) to property referred to in this Section 9.2.4 caused in whole or in part by the negligence of  
14 Peregrine, of a Retained Party, or of anyone directly or indirectly employed by any of them, except to the  
15 extent of damage or loss attributable to the negligence of the City. Peregrine shall designate and identify  
16 to the City a responsible person at the Expansion Site whose duty shall be the prevention and reporting  
17 of accidents, who shall be the project superintendent unless otherwise designated by Peregrine in writing  
18 to the City and Architect.

19 **9.2.5** Peregrine may operate in the Stadium during construction of the Expansion  
20 Improvements in accordance with the Operating Agreement and all additional rules, regulations, and  
21 safety procedures related to such construction. No ticketed events have been or will be scheduled to  
22 occur at the Stadium during construction of the Expansion Improvements nor will construction of the  
23 Expansion Improvements occur during any scheduled ticketed events. The foregoing sentence does not  
24 preclude (a) scheduling ticketed events during times of no construction activity and (b) events during  
25 construction held outside the area in which Expansion Improvements are under construction. Peregrine  
26 shall defend, indemnify, and hold harmless the City, and the City Indemnitees from any and all Claims  
27 arising out of events or other operations held at the Stadium during construction.

### 28 **9.3 City's Right To Inspect and Receive Information**

29 Peregrine shall provide to the City timely information regarding the progress of the Expansion  
30 Improvements through every phase of design and construction.

31 **9.3.1** During the Term, Peregrine shall submit to the City's Construction Representative  
32 not less frequently than monthly a report in such form and detail as may be reasonably acceptable to the  
33 City, as to the progress of design, financing, budgets, schedules, cost estimates, and upcoming approvals  
34 related to the Expansion.

35 **9.3.2** The City's Construction Representative and Peregrine's Construction  
36 Representative, or their respective designees, shall meet with and consult with each other, not less than  
37 every two weeks, regarding the status of the Expansion Improvements. Such meetings shall generally be  
38 held at the Stadium unless the Construction Representatives or Alternates otherwise agree on a different  
39 location. Peregrine shall give the City's Construction Representative advanced written or electronic notice  
40 of all scheduled meetings with the Architect and Contractor, and the City's Construction Representative  
41 will be given the opportunity to attend any of such meetings. Peregrine will forward to the City's  
42 Construction Representative all minutes of such meetings and any other Expansion meetings.

1           **9.3.3** The City's Construction Representative, and its agents as designated in writing to  
2 Peregrine, shall have access to bidding materials and the Expansion Site and the right to inspect the  
3 Expansion Improvements at all reasonable times to determine the status of selection of subcontractors,  
4 construction, and compliance with the 100% Construction Documents, and as otherwise provided for in  
5 this Agreement. Peregrine shall cause the Retained Parties to make themselves available for access by the  
6 City's Construction Representative and its agents to answer questions and provide information; provided  
7 that, unless the Parties have agreed otherwise, such Retained Parties need not accept direction from the  
8 City's Construction Representative unless given through Peregrine's Construction Representative.

9           **9.3.4** Peregrine shall provide the City's Construction Representative access to copies of  
10 all daily, weekly, and monthly reports or bulletins prepared by the Architect, the Contractor, or the  
11 Expansion Manager with respect to the Expansion Improvements or that relate to the Expansion  
12 Improvements. Peregrine shall cause to be maintained at the Stadium for review by the City's  
13 Construction Representative one record copy of all drawings, specifications, addenda, Change Orders and  
14 other construction documentation, in good order and marked currently to record field changes and  
15 selections made during construction, and one record copy of approved shop drawings, product data,  
16 samples, and similar submittals. These shall be available to the City's Construction Representative to  
17 review at any reasonable time.

18           **9.3.5** If during its inspections of the Expansion Improvements, the City observes safety  
19 hazards, the City may inform Peregrine and the Contractor of those safety hazards, and Peregrine will  
20 cause the Contractor to promptly remedy any actual safety hazards. The City has no responsibility to  
21 inspect the Expansion Improvements for safety hazards or to report any observed safety hazards to  
22 Peregrine or the Contractor. The City shall have no liability on account of its observation or non-  
23 observation of safety hazards and its reporting or non-reporting of safety hazards to Peregrine or the  
24 Contractor.

25           **9.3.6** A representative of the City will be entitled to attend all Owner-Architect-  
26 Contractor ("OAC") meetings, expected to be held weekly, except progress payment review meetings, and  
27 all job walks related to the Expansion. As used in this paragraph, "job walks" means weekly walks of the  
28 construction site following OAC meetings and any other gathering of any combination of Peregrine  
29 representatives, the Architect, Contractor, subcontractors, and other design professionals to walk the  
30 Expansion Site and to seek resolution of design or construction issues related to the Expansion. All City  
31 employees or representatives entering the Expansion Site shall attend a safety orientation program by  
32 the Contractor and execute a liability waiver prior to their initial visit to the Expansion Site. In addition, all  
33 City employees and representatives shall be escorted by the Contractor and wear proper safety gear while  
34 at the Expansion Site.

35           **9.3.7** Peregrine will include in the Retained Party Contracts any necessary provisions to  
36 implement this Section 9.3.

37           **9.3.8** Nothing in this Section 9.3 shall limit the rights of the City under its regulatory  
38 powers as provided in the City Code.

## 39           **9.4 Change Orders**

40           **9.4.1** In order to ensure that the City's interest in the Stadium is protected from adverse  
41 changes in the design of the Expansion, including, but not necessarily limited to, changes to the quality of



1 materials used, changes resulting in increased ongoing repair and maintenance expenses, and changes  
 2 requiring additional City approval in the City's regulatory capacity, Peregrine shall notify the City of each  
 3 Change Order to the Expansion Improvements and the City shall have the right, in its sole discretion, to  
 4 approve each Change Order in accordance with the process in Section 9.4.2.

5 **9.4.2** The City's Construction Representative and Peregrine's Construction  
 6 Representative shall each have the authority to separately approve Change Orders on behalf of the City  
 7 and Peregrine, respectively. The City's Construction Representative may not agree to a Change Order that  
 8 creates an obligation for the City to contribute money to the Expansion. One of the City's Construction  
 9 Representatives and one of Peregrine's Construction Representatives shall be available upon not more  
 10 than twenty-four (24) hours' notice to come to the Expansion Site to discuss a proposed Change Order.  
 11 All Change Orders shall be in writing and signed by Peregrine's Construction Representative, and Peregrine  
 12 shall promptly submit the same to the City's Construction Representative. The City's Construction  
 13 Representative shall promptly approve or disapprove the Change Order, but in no event later than five (5)  
 14 Business Days after receipt from Peregrine. If the City fails to approve a proposed Change Order within  
 15 such 5-Business-Day period after receipt of a complete Change Order, the Change Order shall be deemed  
 16 approved by the City. The City's approval of a Change Order shall not be unreasonably withheld.

#### 17 **9.5 Guaranty of Expansion Improvements**

18 The Final Completion of the Expansion and payment of all costs and expenses associated with the  
 19 Expansion, including Cost Overruns will be guaranteed by Henry Merritt Paulson, Jr. and Henry Merritt  
 20 Paulson, III, pursuant to the Expansion Completion Guaranty.

#### 21 **9.6 As Built Survey**

22 Within one hundred twenty (120) days after Substantial Completion of the Expansion  
 23 Improvements, Peregrine shall provide the City with two (2) hard copies of and an electronic copy of an  
 24 "as built" survey for those Expansion Improvements, if any, that alter the footprint of the Stadium as  
 25 compared to the footprint of the Stadium as of the Effective Date. Peregrine shall be responsible for and  
 26 pay all costs of the "as built" survey for the Expansion Improvements. This Section 9.6 shall survive the  
 27 termination of this Agreement until the as-built survey for the Expansion Improvements is delivered to  
 28 the City.

#### 29 **9.7 Liens**

30 In the event any contractor's lien, Little Miller Act claim, or other statutory lien shall be filed during  
 31 the term of this Agreement against any portion of the Stadium or any portion of the Expansion  
 32 Improvements being constructed at the Stadium, or against any payment or performance bonds with  
 33 respect to the Expansion Improvements, by reason of labor, services, or materials supplied to, or at the  
 34 request of, Peregrine pursuant to any construction of the Expansion Improvements, Peregrine shall pay  
 35 and discharge such lien or claim within thirty (30) days after the filing thereof, subject to the provisions of  
 36 the following sentence. Peregrine shall have the right to contest the validity, amount or applicability of  
 37 any such lien or claim by appropriate legal proceedings, and so long as Peregrine furnishes a bond or  
 38 indemnity as provided below, and is prosecuting such contest in good faith, the requirement that it pay  
 39 and discharge such items within said thirty (30) day period shall not be applicable. In any event, Peregrine  
 40 shall within thirty (30) days after the filing either post a bond in accordance with applicable Laws, or in  
 41 the alternative indemnify, or cause a Retained Party to indemnify, against such liens or claims in amount



1 and form satisfactory to induce a title insurance company to insure over such liens without showing any  
2 title exception by reason of such liens. Peregrine shall defend, indemnify, and hold the City harmless from  
3 all loss, damage, liability, expense, or claim whatsoever (including attorneys' fees and other costs of  
4 defending against the foregoing) resulting from the assertion of any such liens or claims provided that this  
5 provision shall not change the obligation of the Party otherwise to pay the cost of the work giving rise to  
6 the lien as provided by other provisions of this Agreement. If such legal proceedings shall be finally  
7 concluded (so that no further appeal may be taken) adversely to Peregrine, Peregrine shall within ten (10)  
8 days thereafter cause the liens or claims to be discharged of record. Any cost or expense contemplated  
9 by this Section 9.7 shall be borne solely by Peregrine. This Section 9.7 shall survive the termination of this  
10 Agreement.

## 11 **9.8 Non-regulatory Punchlist Procedure**

12 **9.8.1** When the Contractor considers the Expansion Improvements, or a portion  
13 thereof which Peregrine and the City agree to accept separately, are substantially complete, the  
14 Contractor shall submit a request to the Architect for an inspection to determine Substantial Completion  
15 and Peregrine shall notify the City in writing at least five (5) Business Days in advance of such inspection  
16 so that the City may attend as well. In advance of the inspection, the Contractor shall prepare and submit  
17 to the Architect and Peregrine a comprehensive list of items that the Contractor believes remain to be  
18 completed or corrected prior to final payment (the "Preliminary Punch List"), which Peregrine shall  
19 transmit to the City. Upon receipt of the Preliminary Punch List, the Architect, in conjunction with  
20 Peregrine, the Contractor, and the City (if the City so elects), shall inspect the Expansion Improvements or  
21 portion thereof to establish whether Substantial Completion has been achieved and to provide input on  
22 the Preliminary Punch List. Following this inspection, the Architect shall review and edit or supplement,  
23 as necessary, the Preliminary Punch List so that it properly reflects all items of Expansion Improvements  
24 which the Architect, Peregrine, and the City believe are not in accordance with the requirements of the  
25 General Construction Contract. The revised Preliminary Punch List shall be submitted to Peregrine and the  
26 City for approval. Approval or disapproval shall be given by the City and Peregrine within five (5) Business  
27 Days after receipt. The Preliminary Punch List approved by Peregrine and the City shall be the "Punch  
28 List". Peregrine shall transmit the Punch List to the Contractor and the City. Before issuance of the  
29 Certificate of Substantial Completion, Peregrine shall cause the Contractor to complete or correct such  
30 items on the Punch List that are necessary to achieve Substantial Completion. When the Contractor  
31 considers the items on the Punch List to be substantially complete, the Contractor shall then submit to  
32 Peregrine a request for another inspection by the Architect. Peregrine will notify the City of all such  
33 additional inspections in the same manner as the notice for the initial inspection, and the City may elect  
34 to participate in any such inspections. If an item on the Punch List is not approved by the City and the  
35 Architect as being satisfactorily completed, Peregrine shall complete or cause the Contractor to complete  
36 the item until it is satisfactorily completed. All such items shall be subject to re-inspection in accordance  
37 with this Section 9.8. Any Dispute between Peregrine and the City with respect to satisfactory completion  
38 of items on the Punch List shall be subject to and resolved by Dispute Resolution. When the Architect, the  
39 City, and Peregrine agree that the Expansion Improvements or portion thereof are substantially complete,  
40 the Architect will prepare a "Certificate of Substantial Completion" which shall establish the date of  
41 Substantial Completion and shall fix the time within which the Contractor shall finish all items on the  
42 Punch List. Each of the Architect, the City, the Contractor, and Peregrine shall sign the Certificate of  
43 Substantial Completion to evidence their respective agreement that the Expansion Improvements or  
44 portion thereof are Substantially Complete.

1           **9.8.2** The Certificate of Substantial Completion shall in no way limit or affect continuing  
2 obligations set forth in this Agreement and Related Agreements. In addition, the City's participation in  
3 Substantial Completion inspections shall not relieve Peregrine from complying with any of the regulatory  
4 requirements regarding the construction of improvements under City Codes and other applicable Laws.  
5 Certificates of Substantial Completion will be in such form as will enable them to be recorded with the  
6 County Clerk of Multnomah County, Oregon.

7           **9.8.3** Upon final completion of all of the Expansion Improvements, the Contractor shall  
8 forward to Peregrine a written notice that the Expansion Improvements are ready for final inspection and  
9 acceptance. Upon receipt, Peregrine will forward the notice to the Architect, who will promptly make such  
10 inspection. Peregrine shall notify the City in writing at least five (5) Business Days in advance of such  
11 inspection so that the City may attend as well. When the Architect, the City, and Peregrine agree that the  
12 Expansion Improvements are complete in accordance with the General Construction Contract and the  
13 Drawings and Specifications, Peregrine and the Architect will submit a written request to the City for  
14 confirmation that the Expansion Improvements are Finally Complete. If the City reasonably agrees that  
15 the Expansion Improvements are Finally Complete, the City shall issue an appropriate instrument (the  
16 "Certificate of Final Completion") so certifying. The Certificate of Final Completion shall be issued by the  
17 City when: (a) the City has received all documents described in Exhibit 9.8.3(a); (b) the City has received  
18 the City's Acknowledgement Form (the form of which is attached as Exhibit 9.8.3(b)) signed by the  
19 Contractor; and (c) Peregrine has removed all rubbish, tools, scaffolding, and surplus materials and  
20 equipment from the Stadium. Final payment shall not be made to the Contractor until the City has issued  
21 the Certificate of Final Completion. The Certificate of Final Completion by the City shall be a conclusive  
22 non-regulatory determination by the City that the Expansion Improvements are Finally Completed but  
23 shall not otherwise limit or affect any continuing obligation of Peregrine under the Related Agreements  
24 or otherwise under this Agreement.

25           **9.8.4** If Peregrine believes that a Certificate of Substantial Completion should be issued  
26 and the City reasonably disagrees, the City shall furnish its objections in writing to Peregrine within five  
27 (5) Business Days after the written request by Peregrine for approval of the issuance of a Certificate of  
28 Substantial Completion, or it shall waive all objections to the Certificate of Substantial Completion and  
29 shall be deemed to have signed it. Upon receipt of the City's objections, Peregrine shall cause the  
30 Contractor to complete the Expansion Improvement in a manner responsive to the objections. Any  
31 Dispute with respect to the Certificate of Substantial Completion shall be subject to Dispute Resolution if  
32 the Dispute Resolution provisions are still in effect or judicial resolution if the Dispute Resolution  
33 provisions are no longer in effect.

#### 34           **9.9 Correction of Material Defects**

35           **9.9.1** During the course of construction of the Expansion Improvements, the City and  
36 Peregrine shall promptly notify each other of any Material Defects of which a Party becomes aware of in:  
37 (a) the 100% Construction Documents; (b) in the work of any of the Retained Parties; or (c) in the  
38 Expansion Improvements. Promptly after notice by the City or actual knowledge by Peregrine of a Material  
39 Defect, Peregrine shall promptly commence and thereafter diligently proceed to correct any such Material  
40 Defect. If the City notifies Peregrine of a Material Defect within five (5) years after Substantial Completion,  
41 Peregrine shall promptly commence and thereafter diligently proceed with the Correction of any such  
42 Material Defect or any Material Defect known by Peregrine. Peregrine shall undertake the Correction in a  
43 manner to minimize interference, to the extent reasonably practical, with the operations of the Expansion



1 Improvements. All costs of such Correction which are not recovered from the Contractor, Architect,  
2 Retained Parties, or third parties shall be borne solely by Peregrine.

3 **9.9.2** If the Correction would not be practicable or economically feasible under the  
4 circumstances and provided that the function, utility, useful life, structural components, and aesthetic  
5 qualities of the Expansion Improvements are not compromised, the Correction need not be made, subject  
6 to the City's reasonable approval, so long as any partial Corrections acceptable to the City that can be  
7 reasonably made are made to the Expansion Improvements.

8 **9.9.3** The obligation of Peregrine to correct Material Defects shall be independent of  
9 the process for identifying and completing the Punch List items pursuant to Section 9.8 (although the  
10 identification or Correction of a Material Defect may occur during the Punch List process set forth in  
11 Section 9.8) and shall be independent of any obligation owed to a Party under any warranty or guaranty  
12 from an architect or a third-party contractor or supplier.

13 **9.9.4** Promptly after becoming aware of a claim against any Retained Party related to  
14 the Expansion Improvements, Peregrine shall put the Retained Party on written notice of such claim and  
15 shall provide a copy of such notice to the City. The City shall have the right, but not the obligation, to  
16 advise Peregrine in writing of any matters of which the City becomes aware that may constitute a claim  
17 against a Retained Party. Peregrine shall vigorously prosecute all good faith Claims against Retained  
18 Parties promptly after becoming aware of a claim against any Retained Party. The cost of such prosecution  
19 shall be borne solely by Peregrine.

20 **9.9.5** Peregrine shall assign and deliver to the City all Warranties from third-party  
21 contractors and suppliers with respect to the Expansion Improvements. Peregrine shall organize the  
22 Warranties by logical components of the Expansion Improvements; shall index the Warranties to show  
23 the components to which such Warranty applies; shall show the expiration date for each such Warranty;  
24 and shall promptly deliver the same to the City after Substantial Completion of each component of the  
25 Expansion Improvements. Notwithstanding the foregoing, Peregrine shall retain the right to enforce all  
26 Warranties as necessary to perform its obligations under this Section 9.9, and the City shall cooperate in  
27 such enforcement, so long as the same is at no additional expense to the City.

28 **9.9.6** Peregrine shall give the City thirty (30) days prior notice of any training dates  
29 established in connection with the Warranties. The City shall cause its required employees and Peregrine  
30 shall cause its Stadium manager to attend such training. Peregrine shall provide to the City along with the  
31 Warranties in Section 9.9.5, a certificate signed by the Architect or Peregrine's Representative that all the  
32 required training associated with such Warranties has been completed. Each Party shall bear  
33 responsibility for the effect on the Warranties, if any, of failure of any of such Party's employees to attend  
34 such training meetings after due notice of the same.

35 This Section 9.9 shall survive the termination of this Agreement until expiration of the applicable statute  
36 of repose period.

### 37 **9.10 Right-of-Way Encroachment Issues**

38 Peregrine's proposed design for the Expansion includes the construction of a portion of the  
39 Stadium structure in, on and above the public right-of-way along SW 18th Avenue, for approximately 314  
40 feet between SW Yamhill and SW Taylor Streets (the "Encroachment"). Peregrine will obtain all necessary  
41 regulatory and other approvals from the City for the Expansion, including any required approval of a



1 “Major Encroachment” as defined in the City’s Portland Policy Document (TRN-8.01) and of any business  
 2 activity that Peregrine desires to conduct within any Major Encroachment. Except to the extent Peregrine  
 3 obtains an adjustment or waiver to the following requirements from a governmental body with authority  
 4 to grant such adjustment or waiver, Peregrine shall (a) bear any and all costs, including any right-of-way  
 5 leasing fees charged by the City, associated with the Expansion; and (b) perform and pay for all repairs  
 6 and maintenance of the public right-of-way or portion thereof underlying or constituting a portion of the  
 7 Expansion including anything attached to the Stadium such as street lights and catenary. To the extent  
 8 that the City, as owner of the Stadium, is charged for right-of-way leasing fees, for air space leasing fees,  
 9 or incurs any other costs or expenses related to the Encroachment, including any future escalations of  
 10 such costs or expenses, Peregrine shall promptly reimburse the City for such fees, costs, or expenses.

#### 11 **9.11 Roof Warranty**

12 On or before Final Completion, Peregrine shall provide the City with either (a) a warranty for the  
 13 Expansion’s roof that is effective for a minimum of twenty (20) years, or (b) a warranty for the Expansion’s  
 14 roof that is effective for less than twenty (20) years and a guarantee from Peregrine to repair the roof at  
 15 Peregrine’s expense during the time period after the expiration of such less-than-20-year warranty until  
 16 twenty (20) years after Final Completion. This Section 9.11 shall survive the termination of this Agreement  
 17 for the period of twenty (20) years after Final Completion at which time this Section 9.11 shall terminate  
 18 and cease to have any effect.

#### 19 **9.12 Timing of Construction; Financing**

20 Peregrine has provided the City with evidence that it has obtained a line of credit from JPMorgan  
 21 Chase Bank, N.A. in the amount of \$70 million (the “LOC”). Peregrine represents and warrants to the City  
 22 that \$60 million of the LOC is and shall remain solely dedicated to and used for costs and expenses  
 23 associated with designing and constructing the Expansion. The LOC is effective through September 30,  
 24 2019. Peregrine shall renew the LOC as necessary to maintain the effectiveness of the LOC through the  
 25 Final Completion. The City agrees that the LOC is reasonable evidence that Peregrine has obtained all  
 26 financing and funds necessary to complete and pay the cost of the Expansion through September 30,  
 27 2019. If Final Completion will not occur by September 30, 2019, then Peregrine shall provide the City with  
 28 written evidence that the effective period of the LOC has been extended through the Final Completion  
 29 date or that funding acceptable to the City in its reasonable discretion has otherwise been committed to  
 30 complete the Expansion at least thirty (30) days prior to September 30, 2019.

### 31 **SECTION 10 EXPANSION SCHEDULE, TIME OF COMPLETION**

#### 32 **10.1 Expansion Schedule**

33 The projected construction schedule for the Expansion is attached as Exhibit 10.1 (the “Expansion  
 34 Schedule”).

35 **10.1.1** Peregrine shall achieve Final Completion of the Expansion Improvements by  
 36 December 31, 2022 (the “Final Completion Date”), subject to Excused Delays.

37 **10.1.2** Additionally, Peregrine will manage the construction of the Expansion to  
 38 minimize the number of Timbers and Thorns home games and any other Event, as defined in the Operating

1 Agreement, that will not be played at the Stadium during any MLS or NWSL season in which construction  
2 occurs.

### 3 10.2 Changes In Final Completion Date

4 Any change to the Final Completion Date shall require the City's prior written consent, except for:

5 10.2.1 Changes in the Final Completion Date to which the Contractor is entitled under  
6 the General Construction Contract;

7 10.2.2 Changes based on City-approved Change Orders; or

8 10.2.3 Changes due to the City's breach of this Agreement.

### 9 10.3 Avoidance of Delays

10 Peregrine and the City shall use Reasonable Efforts to avoid any delay in the Substantial Completion and  
11 Final Completion of the Expansion Improvements. Peregrine shall promptly advise the City of any facts or  
12 circumstances that may give rise to a delay in the Substantial Completion of the Expansion Improvements  
13 compared to the then approved Expansion Schedule. The Expansion Schedule may be adjusted by  
14 Peregrine from time to time by written notice to City detailing any changes. If there is a material change  
15 in the Expansion Schedule, Peregrine shall provide the City with a description of how Peregrine will  
16 nevertheless achieve Final Completion of the Expansion Improvements by the Final Completion Date. In  
17 the event of such anticipated delay, the City, Peregrine, and the Contractor shall meet to explore ways to  
18 change the sequencing of the work, or other actions which might be taken to avoid the anticipated delay  
19 in Substantial Completion or delay of the Final Completion Date. The City shall not be required to approve  
20 a Change Order as a means to avoid the anticipated delay. The General Construction Contract will contain  
21 provisions consistent with the provisions of this Section 10.3.

## 22 **SECTION 11** CONSTRUCTION DISPUTE RESOLUTION

### 23 11.1 When Applicable

24 11.1.1 The Dispute Resolution process is hereby established for the resolution of any  
25 disputes and claims arising out of or relating to the design and construction of the Expansion  
26 Improvements and for other designated disputes referred to in this Agreement (a "Dispute" or  
27 "Disputes"). Dispute Resolution shall be the complete, final, and binding means (except as provided in  
28 Section 11.6) for resolving Disputes referred to in the preceding sentence or where this Agreement  
29 expressly provides that a matter is subject to Dispute Resolution. Dispute Resolution shall consist of the  
30 processes set forth in this Section 11, including mediation by a single mediator followed by arbitration by  
31 a single arbitrator (the "Dispute Resolver") in accordance with the terms of this Section 11.1; provided,  
32 however, that for disputes involving the Contractor, the Architect, or the Expansion Manager, mediation  
33 will not be required prior to arbitration. The Dispute Resolver will provide special expertise to assist in,  
34 facilitate, and, if required, arbitrate the timely and equitable resolution of Disputes between Peregrine  
35 and the City, in an effort to avoid construction delay and litigation.

36 11.1.2 If a Dispute also involves a dispute by or against one or more Retained Parties,  
37 Peregrine shall promptly give notice to the City of any binding dispute resolution procedure under the  
38 contract with the Retained Party involved in the dispute ("Related Dispute Resolution"), and the City shall

1 have the opportunity to participate in the Related Dispute Resolution as a party. Any factual or legal  
2 determinations established in the Related Dispute Resolution shall be binding upon Peregrine and the City  
3 (if the City received sufficient prior written notice of the Related Dispute Resolution proceeding to  
4 participate in the same) in any subsequent proceeding provided for under this Agreement. The City further  
5 agrees to cooperate, to the extent reasonably requested by Peregrine, in connection with any dispute  
6 subjected to any Related Dispute Resolution or any executive resolution procedure provided for in  
7 contracts with a Related Party.

## 8 **11.2 Resolution of Disputes Encouraged**

9 **11.2.1** It is not intended that Dispute Resolution be a substitute for the Parties amicably  
10 and reasonably resolving their differences. It is intended that the Dispute Resolution will encourage  
11 Peregrine and the City to resolve potential disputes without resorting to this procedure. It is intended that  
12 Disputes will be resolved promptly, with minimum expense, and with minimum disruption to the  
13 administration and performance of the design and construction of the Expansion Improvements.  
14 Accordingly, in the event of a Dispute, the City's Construction Representative and Peregrine's Construction  
15 Representative shall meet to attempt to resolve the matter if either party requests such a meeting. The  
16 City's Construction Representative and Peregrine's Construction Representative shall meet over a period  
17 of ten (10) Business Days and shall work diligently and in good faith to try to resolve the Dispute.

18 **11.2.2** If the Dispute cannot be resolved by the Authorized Parties it shall be referred to  
19 Mike Golub for Peregrine and to the City's CAO for the City, who also shall have the authority to resolve  
20 the Dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after  
21 having had a sufficient time to review information related to the Dispute, which time period shall not  
22 exceed thirty (30) days.

23 **11.2.3** If the Parties are unable to resolve the Dispute in accordance with Sections 11.2.1  
24 and 11.2.2, the Dispute will be submitted to mediation. The mediator shall be chosen by mutual  
25 agreement of the Parties within ten (10) days of the last meeting held under Section 11.2.2 based on the  
26 criteria set forth in Section 11.3. If the Parties cannot agree upon a mediator, then the Dispute will be  
27 presented to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation  
28 fee shall be borne equally by the City and Peregrine.

29 **11.2.4** If the Dispute is not resolved by mediation, the City and Peregrine agree to  
30 resolve the dispute by arbitration with Arbitration Service of Portland, Inc. ("ASP") and in accordance with  
31 ASP's procedures. Peregrine shall pay the arbitration fee required to initiate the arbitration, which shall  
32 be a cost of the arbitration.

33 **11.2.4.1** The City and Peregrine shall agree upon the appointment of an  
34 arbitrator with qualifications set forth in Section 11.3 for a Dispute Resolver. In the event of disagreement,  
35 each Party shall appoint one arbitrator within ten (10) Business Days of the decision to arbitrate. The two  
36 arbitrators selected by the Parties will appoint a third arbitrator to act as the sole arbitrator.

37 **11.2.4.2** The decision of the arbitrator shall be final, binding, and  
38 conclusive upon the Parties and subject to appeal only on those grounds for which arbitrations in Oregon  
39 are subject to appeal and may be confirmed or embodied in an order or judgment of any court having  
40 jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award



1 consequential or punitive damages and shall not have the power to rescind this Agreement, but may  
2 award attorneys' fees and costs of arbitration.

3 **11.2.5** If the Dispute is not arbitrated and remains unresolved, either Party may pursue  
4 resolution through litigation.

5 **11.3 Dispute Resolver**

6 **11.3.1** Peregrine and the City shall mutually establish with the Dispute Resolver the  
7 retainer and hourly charge payable to him or her and any reimbursable costs. The fees and costs of the  
8 Dispute Resolver shall be split by the Parties unless, in arbitration, the arbitrator awards costs.

9 **11.3.2** The Dispute Resolver shall have at least five (5) years of experience with the type  
10 of construction involved in the Expansion and with comparable experience in the interpretation of  
11 construction contract documents. Additional criteria and limitations for the Dispute Resolver shall be as  
12 follows:

13 **11.3.2.1** No such person shall have an ownership interest in any Party (or  
14 Affiliate) to this Agreement, the Architect, the Contractor, any Retained Parties or a direct or indirect  
15 financial interest in this Agreement, except for payment for services as the Dispute Resolver.

16 **11.3.2.2** No such person shall have been employed by or retained by  
17 Peregrine (or any Affiliate), the City, the Architect or the Contractor within a period of two (2) years prior  
18 to the Effective Date other than persons previously retained as mediators or arbitrators.

19 **11.3.2.3** No such person shall have had prior involvement in the Expansion  
20 of a nature which could compromise the person's ability to resolve disputes impartially.

21 **11.3.2.4** No such person shall be employed by any Party (or Affiliate) to  
22 this Agreement or by the Architect or the Contractor while the Dispute is pending.

23 **11.3.2.5** No discussion or agreement shall be made between any Dispute  
24 Resolver and any party to this Agreement or the Contractor or the Architect for employment.

25 **11.3.3** In case the Dispute Resolver needs to be or is to be replaced, the replacement  
26 Dispute Resolver will be jointly selected by the Parties or, if they cannot agree, then by the Presiding Judge  
27 of Multnomah County, Oregon. The appointment of a replacement Dispute Resolver will begin promptly  
28 upon determination of the need for replacement and shall be completed within thirty (30) days thereafter.

29 **11.3.4** Service of a Dispute Resolver may be terminated at any time with no less than  
30 thirty (30) days' notice as follows:

31 **11.3.4.1** Upon failure of the Dispute Resolver to perform the duties of the  
32 Dispute Resolver under this Agreement, other than for reasonable cause;

33 **11.3.4.2** By mutual agreement of the City and Peregrine; or

34 **11.3.4.3** By death, disability, or resignation of the Dispute Resolver.

1                           **11.3.4.4**           No appointed Dispute Resolver may be terminated at such time  
2 as may materially disrupt an on-going Dispute Resolution, unless Peregrine and the City otherwise agree.

3                   **11.4    Operation of Dispute Resolver**

4                   In connection with Disputes, the Dispute Resolver shall visit the Expansion Site when reasonably  
5 requested by Peregrine or the City and meet with representatives of Peregrine, the City, the Contractor,  
6 and such Retained Parties as the City or Peregrine may designate. The frequency of these visits shall be as  
7 agreed by Peregrine, the City, and the Dispute Resolver, depending on the progress of the work. Any field  
8 inspection may cover all segments of the work. During these visits or at any other time, neither the City  
9 nor Peregrine shall seek the Dispute Resolver's advice or opinion on a pending or anticipated Dispute. It  
10 is anticipated that the Dispute Resolver shall be contacted only in connection with Disputes, and that the  
11 Dispute Resolver need not devote time or attention to the Expansion except as necessary for the  
12 resolution of Disputes.

13                   **11.5    Procedure and Schedule for Dispute Resolution**

14                   **11.5.1** The Dispute Resolver shall consider Disputes submitted to him or her as quickly  
15 as possible, taking into consideration the particular circumstances, including any urgency caused by the  
16 need to avoid any delays in the work or the need to remove or correct promptly any work performed in  
17 error, and the time required to prepare detailed documentation.

18                   **11.5.2** A Party submitting a Dispute to the Dispute Resolver shall submit the matter in  
19 writing to the Dispute Resolver and the other Party and shall include documents and other information  
20 the Party believes is necessary to substantiate its position.

21                   **11.5.3** When a Dispute is submitted to the Dispute Resolver, the Dispute Resolver shall  
22 decide when to hold mediation meetings or the arbitration, as applicable. For an urgent matter, based on  
23 the opinion of the Party submitting the matter, unless the Dispute Resolver determines otherwise, the  
24 Dispute Resolver shall hold the arbitration or mediation at his or her earliest convenience, but in no event  
25 later than ten (10) Business Days after submission of the Dispute to the Dispute Resolver.

26                   **11.5.4** Peregrine and the City shall each be notified of the date, time, and place for  
27 hearing or meeting at the same time and at least two (2) Business Days in advance (except adjourned  
28 hearings shall be as announced at the hearing) and be afforded an opportunity to be heard by the Dispute  
29 Resolver and to offer evidence. All hearings shall be conducted in the City of Portland.

30                   **11.5.5** In any Dispute, the City and Peregrine shall have full access to each other's books  
31 and records relating to the Expansion only and the right to make copies to be used in such Dispute  
32 Resolution.

33                   **11.5.6** Procedures for the conduct of hearings shall be as established by the Dispute  
34 Resolver, and, unless the Dispute Resolver determines otherwise, shall generally follow ASP's rules. The  
35 Dispute Resolver's determinations or resolution of the Dispute and any awards based thereon will be  
36 given in writing to Peregrine and the City within five (5) days of completion of the hearing, and shall be  
37 final and conclusive and binding on the Parties and judgment may be entered upon such determinations,  
38 resolutions<sup>1</sup> and awards in accordance with applicable Laws in a court of competent jurisdiction.

1           **11.5.7** For purposes of arbitration, the terms and provisions of this Section 11.5 shall  
 2 only apply to the extent such terms and provisions are consistent with the method of arbitration selected  
 3 by the Parties (or chosen by default if the Parties cannot agree).

4           **11.6 Equitable Proceeding**

5           If a Party desires to seek interim relief, whether affirmative or prohibitive, in the form of a  
 6 temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a  
 7 Dispute, either before or after the initiation of Dispute Resolution, that Party may initiate the legal  
 8 proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this Section 11.6 shall be  
 9 construed to suspend or terminate the obligation of the Parties to comply with the procedures set forth  
 10 in this Section 11 with respect to the Dispute that is the subject of such Equitable Proceeding during the  
 11 pendency of any such Equitable Proceeding, including any appeal or review. Notwithstanding the  
 12 determination of the Dispute Resolver, any interim relief granted by such Equitable Proceeding shall not  
 13 be reversed or modified by the Dispute Resolver's determination, and any factual or legal determinations  
 14 made in the permanent injunction stage of such Equitable Proceeding shall be binding upon the Parties in  
 15 the Dispute before the Dispute Resolver.

16           **11.7 Compensation**

17           Except as set forth in Section 11.2.4, all fees and expenses of the Dispute Resolver and any  
 18 reimbursable expenses shall be shared equally by Peregrine and the City. All costs and expenses incurred  
 19 by Peregrine and the City in connection with any Dispute before the Dispute Resolver, including  
 20 consultants' and attorneys' fees shall be borne by the City and Peregrine equally.

21 This Section 11 shall survive the termination of this Agreement.

22 **SECTION 12** REPRESENTATIONS AND WARRANTIES

23           **12.1 City Representations and Warranties**

24           Subject to the qualifications and indemnifications set forth in Exhibit 12.1 entitled "Qualifications  
 25 and Indemnifications Relating to City's Representations and Warranties," and the other qualifications set  
 26 forth in this Agreement, as of the Effective Date, the City represents and warrants to Peregrine the  
 27 following:

28           **12.1.1** The City is a municipal corporation duly organized and validly existing under the  
 29 laws of the State of Oregon, and has full requisite municipal power and authority to execute, enter into  
 30 and deliver this Agreement and each of the Related Agreements to which it is a party, and to perform its  
 31 obligations under this Agreement, subject to any disclaimers or qualifications set forth in this Agreement  
 32 and each of the Related Agreements to which it is a party.

33           **12.1.2** The execution, delivery, and performance of this Agreement by the City and each  
 34 of the Related Agreements to which it is a party and the consummation of the transactions contemplated  
 35 in this Agreement have been duly authorized by all necessary municipal action on the part of the City. The  
 36 Mayor and Auditor of the City are the persons duly authorized to execute this Agreement on behalf of the  
 37 City and have so executed this Agreement. No further consent, approval, or other authorization of or by  
 38 any court, administrative agency, or other governmental authority is required in connection with the



1 execution, delivery, and performance of this Agreement by the City and the consummation of the  
2 transactions contemplated in this Agreement.

3 **12.1.3** This Agreement is, when duly executed and delivered by the City and by  
4 Peregrine, the legal, valid, and binding obligation of the City, fully enforceable in accordance with its  
5 respective terms, subject to any disclaimers or qualifications in this Agreement. The validity and  
6 enforceability of this Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium,  
7 or other similar laws affecting creditors' rights generally, and by equitable principles governing specific  
8 performance, injunctive relief, and other applicable remedies.

9 **12.1.4** Except as set forth in Exhibit 12.1, neither the execution, delivery, nor  
10 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts with, or would  
11 constitute a default under or with respect to, the City Charter or any other organizational or organic  
12 documents of the City, any applicable law, regulation, rule, code, ordinance, policy or resolution of the  
13 City or of any other jurisdiction which is binding on the City; or any judgment, order, writ, injunction, or  
14 decree of any court, administrative agency, or other governmental authority to which it is party or  
15 otherwise subject which is in any respect material to the transactions contemplated in this Agreement,  
16 subject to any disclaimers or qualifications in this Agreement.

17 **12.1.5** Except as set forth in Exhibit 12.1, neither the execution, delivery, nor  
18 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts with, will  
19 constitute a default under or with respect to, any other agreements, instruments, judgments or decrees  
20 to which the City is a party or is otherwise subject.

21 **12.1.6** Except as set forth in Exhibit 12.1, to the City's actual knowledge, based on the  
22 actual knowledge of the City Attorney, any member of the City Council, or the director or commissioner  
23 or other head of the following City Bureaus or Commissions: Bureau of Development Services, Bureau of  
24 Planning and Sustainability, Office of Management and Finance, no suit, litigation, arbitration or other  
25 proceeding is pending before or by any court, administrative agency, or other governmental authority, or  
26 threatened, against the City or to which the City is or would become a party, seeking to restrain or prohibit,  
27 or seeking damages or other relief in connection with, the execution and delivery of this Agreement or  
28 the consummation of the transactions contemplated in this Agreement, which might materially and  
29 adversely affect the use and operation of the Expansion as contemplated by this Agreement, or which  
30 might adversely affect in any way the validity, execution, delivery, or performance of any of this  
31 Agreement by the City.

32 **12.1.7** Except as described in Exhibit 12.1, to the City's actual knowledge, based on the  
33 actual knowledge of the City Attorney, any member of the City Council, or the director, commissioner, or  
34 other head of the following City Bureaus or Commissions: Bureau of Development Services, Bureau of  
35 Planning and Sustainability, Office of Management and Finance, the City has not received notice that the  
36 Stadium is currently in violation of any Laws or judicial or administrative decisions pertaining to historic  
37 preservation, industrial health matters, or safety matters, but excluding Environmental Laws.

38 **12.1.8** Subject to the Permitted Exceptions, the City owns the Stadium (other than the  
39 MAC Parcel) in fee simple, free and clear of any liens, claims or encumbrances which are or would be  
40 senior to or which might otherwise adversely affect Peregrine's interest in or use or operation of the  
41 Stadium as contemplated by this Agreement.

1           **12.2 Peregrine Representations and Warranties**

2           Subject to the qualifications in paragraphs 1 and 6 of Exhibit 12.1, as of the Effective Date of this  
3 Agreement, Peregrine represents and warrants to the City the following:

4           **12.2.1** Peregrine is a limited liability company duly organized and validly existing under  
5 the laws of the State of Delaware (and qualified to conduct business in the State of Oregon), and has full  
6 requisite power and authority to execute, enter into and deliver this Agreement and each of the Related  
7 Agreements to which it is a party, and to perform its obligations under this Agreement and each of the  
8 Related Agreements to which it is a party.

9           **12.2.2** The execution, delivery, and performance of this Agreement by Peregrine and the  
10 Related Agreements to which it is a party and the consummation of the transactions contemplated in this  
11 Agreement have been duly authorized by all necessary action on the part of Peregrine. The undersigned  
12 manager of Peregrine is duly authorized to execute this Agreement on behalf of Peregrine, a manager of  
13 Peregrine has so executed this Agreement, and no further consent, approval, or other authorization is  
14 required in connection with the execution, delivery, and performance of this Agreement and the Related  
15 Agreements, by Peregrine and the consummation of the transactions contemplated in this Agreement by  
16 Peregrine.

17           **12.2.3** This Agreement and each of the Related Agreements to which Peregrine is a party  
18 is, when duly executed and delivered by Peregrine and the City, the legal, valid, and binding obligation of  
19 Peregrine, fully enforceable in accordance with their respective terms. The validity and enforceability of  
20 this Agreement and each of the Related Agreements to which Peregrine is a party may be limited by  
21 bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights  
22 generally, and equitable principles governing specific performance, injunctive relief, and other applicable  
23 remedies.

24           **12.2.4** Neither the execution, delivery, nor performance of this Agreement or any of the  
25 Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with, or would  
26 constitute a default under or with respect to (a) Peregrine's operating agreement or (b) any judgment,  
27 order, writ, injunction, or decree of any court, administrative agency, or other governmental authority to  
28 which it is party or otherwise subject to which is in any respect material to the transactions contemplated  
29 in this Agreement.

30           **12.2.5** Peregrine is in compliance in all material respects with all Laws and is in  
31 compliance with all Laws with respect to the transactions contemplated in and by this Agreement and the  
32 Related Agreements.

33           **12.2.6** Neither the execution, delivery, nor performance of this Agreement or any of the  
34 Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with, or will constitute  
35 a default under or with respect to any other agreements, instruments, judgments or decrees to which  
36 Peregrine is a party or is otherwise subject.

37           **12.2.7** To the best of Peregrine's actual knowledge, based on the actual knowledge of  
38 its managers, no suit, litigation, arbitration or other proceeding is pending before or by any court,  
39 administrative agency or other governmental authority, or threatened against Peregrine or to which  
40 Peregrine is or would become a party, seeking to restrain or prohibit, or seeking damages or other relief  
41 in connection with, the execution and delivery of this Agreement or any of the Related Agreements, or

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1 are to be paid by Peregrine (or by the Contractor or its Subcontractors), and the tail coverage required by  
 2 this Section 13.1 shall survive the termination of this Agreement until the expiration of the applicable  
 3 period of statute of repose at which time this Section 13.1 shall terminate and cease to have any effect.

4 This Section 13.1 shall not limit in any way the extent to which Peregrine may be held responsible  
 5 for the payment of damages to persons or property resulting from Peregrine's activities, the activities of  
 6 its invitees, employees, licensees, agents, or independent contractors, or the activities of any other person  
 7 or persons for whom Peregrine otherwise is legally responsible. If Peregrine obtains insurance policies in  
 8 addition to the policies referred to in this Section 13, such policies shall provide that such additional  
 9 policies or coverages will not diminish the coverage required by this Section 13. Peregrine shall provide  
 10 the City with a copy of such additional policy or coverage confirming the above.

#### 11 **13.1.1 Delayed Opening Insurance**

12 Peregrine will not be required to obtain Delayed Opening Insurance.

#### 13 **13.1.2 Commercial General Liability**

14 Peregrine shall cause Contractor to maintain Commercial General Liability insurance ("CGL") as  
 15 part of the Wrap, on an Insurance Services Office ("ISO") form, insuring Peregrine as a named insured,  
 16 until Substantial Completion of the Project and completion of all punch list items, with minimum limits of  
 17 not less than \$2,000,000 per occurrence and \$4,000,000 in the general aggregate. The Commercial  
 18 General Liability insurance shall contain no exclusions other than those noted on the standard ISO form  
 19 and those that are not objectionable to the City in its sole discretion, shall specifically include Contingent  
 20 Liability/Independent Contractor coverage, and shall contain the following specific limits of liability and  
 21 be subject to the following provisions:

22 **13.1.2.1** Personal and Advertising Injury liability limits of not less than  
 23 \$2,000,000 per occurrence.

24 **13.1.2.2** Products and Completed Operations liability limits of not less  
 25 than \$4,000,000 in the aggregate.

26 **13.1.2.3** The Commercial General Liability Policy shall be endorsed to list  
 27 "the City and its bureaus, officers, agents, and employees" as additional insureds with respect to liability  
 28 and defense of suits arising out of the activities performed by, or on behalf of, Peregrine, including not  
 29 only ongoing operations but also completed operations on the ISO form 2010 or CG 2037 form (2004  
 30 edition or equivalent).

31 **13.1.2.4** The Commercial General Liability policy shall also have a per  
 32 project aggregate endorsement.

#### 33 **13.1.3 Umbrella Insurance**

34 Peregrine shall cause Contractor to maintain an Umbrella Policy as part of the Wrap policy with  
 35 liability limits of \$200,000,000 that shall be excess over the CGL and Employers' Liability.

#### 36 **13.1.4 Automobile Liability**



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

#### 4 **13.1.5 Workers' Compensation**

5 Peregrine shall secure and maintain workers' compensation insurance complying with the  
6 statutory limits of the State of Oregon to insure all persons or entities employed by Peregrine and shall  
7 provide employer's liability coverage, including broad form all states protection, if applicable, voluntary  
8 compensation, and Federal endorsement. The employer's liability coverage shall have the following limits:  
9 (a) Bodily Injury by Accident: \$1,000,000 each accident; (b) Bodily Injury by Disease \$1,000,000 each  
10 employee; and (c) Bodily Injury by Disease: \$1,000,000 policy limit. The costs of such insurance shall be  
11 paid by Peregrine.

#### 12 **13.2 Professional Liability Insurance to be Carried by Design Professionals**

13 Peregrine shall cause its Architect and any Retained Parties that are design professionals to  
14 maintain professional liability insurance, on a primary basis, covering wrongful acts, errors and/or  
15 omissions (including design errors, if applicable) for damage arising from professional services in an  
16 amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate. Peregrine shall require and  
17 cause the Architect and any Retained Parties that are design professionals to maintain the Professional  
18 Liability policy until the expiration of the statute of repose for design and construction defects with an  
19 effective date that is retroactive to the date of the initial policy. This Section 13.2 shall survive the  
20 termination of this Agreement until the expiration of the applicable period of statute of repose at which  
21 time this Section 13.2 shall terminate and cease to have any effect.

#### 22 **13.3 Insurance to be Carried by the Contractor**

##### 23 **13.3.1 General**

24 The Contractor shall maintain all the insurance required of Retained Parties under Section 13.4  
25 below, as such requirements may be increased or supplemented by this Section 13.3. Peregrine shall  
26 cause the Contractor to name all Subcontractors as insureds under its Wrap policies or, in the alternative,  
27 to cause each Subcontractor to maintain separate insurance as determined by the Contractor, provided  
28 that each Subcontractor's limits of Commercial General Liability shall not be less than \$2,000,000 per  
29 occurrence and \$2,000,000 in the aggregate.

##### 30 **13.3.2 TRIA**

31 The Contractor's coverage shall include Terrorism Risk Insurance Act (TRIA) coverage.

##### 32 **13.3.3 Umbrella Policy**

33 Contractor shall maintain the Umbrella Policy required by Section 13.1.3, which policy shall be  
34 over and above the general liability and employer's liability policies. This coverage must be kept in effect  
35 until the expiration of the statute of repose for design and construction defects. This Section 13.3.3 shall  
36 survive the termination of this Agreement until the expiration of the applicable period of statute of repose  
37 at which time this Section 13.3.3 shall terminate and cease to have effect.

1                   **13.3.4 Pollution Liability**

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

4                   **13.3.5 Builder's Risk**

5                   During construction of the Project Improvements, in addition to (but not in duplication of) the  
6 other insurance coverages required under this Section 13, Contractor shall maintain a policy of Builder's  
7 Risk insurance acceptable to the City and Peregrine, written on a replacement cost basis including any  
8 subsequent modifications, in an amount not less than the projected total cost of construction of the  
9 Project Improvements as estimated by Peregrine and approved by the City not more than fifteen (15) days  
10 prior to the Insurance Start Date and as thereafter revised from time to time by Peregrine and approved  
11 by the City during the course of such construction.

12                               **13.3.5.1**           Such coverage shall be maintained until final payment has been  
13 made or until no person or entity other than the City or Peregrine has an insurable interest in the property  
14 to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of the City, the  
15 Retained Party, Subcontractors, and sub-tier contractors in the project.

16                               **13.3.5.2**           All Risk Cause of Loss Form - Builder's Risk Coverage shall be on  
17 an all risk cause of loss form and shall include theft, vandalism, malicious mischief, collapse, false-work,  
18 temporary buildings and debris removal including demolition, increased cost of construction, architect's  
19 fees and expenses, flood, earthquake, and collapse coverage, and all below and above ground structures,  
20 water and sewer mains.

21                               **13.3.5.3**           The Builder's Risk policy shall also include the following  
22 amendments and provisions:

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

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

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

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

33                               **13.3.5.4**           **Insured Loss** - A loss insured under the Builder's Risk shall be  
34 adjusted in conjunction with the City and any payments or settlements for the City's loss shall be made  
35 payable to the City. The Contractor shall pay Subcontractors their just share of insurance proceeds  
36 received by Contractor, and by appropriate agreements, written where legally required for validity, shall  
37 require Subcontractors make payments to their subcontractors in similar manner. The City shall have

1 power to adjust and settle the City's loss with insurers. It is expressly agreed that nothing in this section  
2 shall be subjected to arbitration and any references to arbitration are expressly deleted.

### 3 **13.4 Insurance Required to be Carried by Retained Parties (Including the Contractor)**

4 All Retained Party Contracts shall contain clauses requiring the Retained Party to maintain in force  
5 each of the insurance coverages in this Section 13.4 during the term of the Retained Party Contract and  
6 for such additional time as indicated below:

#### 7 **13.4.1 General Provisions:**

8 **13.4.1.1** The Retained Party shall maintain at least the minimum  
9 insurance coverage described in this Section 13.4 and maintain that coverage until Final Completion of  
10 the Project. By requiring such minimum insurance, the City does not guarantee that the insurance is  
11 sufficient to cover all the risks the Retained Party may face. Instead, the Retained Party should assess its  
12 own risks and, if it deems it appropriate and prudent, maintain higher limits, broader coverages, or both,  
13 than the coverage required by the City. The Retained Party is not relieved of any liabilities if it fails to  
14 obtain and maintain the minimum insurance required. The insurance carried by the Retained Party shall  
15 be the primary coverage and non-contributory, and any insurance maintained by the City is excess and  
16 solely for damages or losses for which the City is responsible.

17 **13.4.1.2** All deductibles and premiums are the responsibility of the  
18 Contractor or a Retained Party.

19 **13.4.1.3** The Retained Party Contract amount must include the cost of any  
20 insurance required by this Section 13.4. The Retained Party is not entitled to additional compensation  
21 because it misunderstood what insurance coverage was required. Any confusion regarding what coverage  
22 is required should be brought to the City's attention prior to execution of a Retained Party Contract.

23 **13.4.1.4** The City may, but is not required to, obtain insurance it deems  
24 prudent under the circumstances if it discovers that the insurance required by the Retained Party Contract  
25 has not been obtained or, for whatever reason, is no longer in effect. If so, the City may recover the cost  
26 of obtaining that insurance from Peregrine and may offset such costs against any sums due, or that  
27 become due, to Peregrine under this Agreement or any other agreement.

#### 28 **13.4.2 Workers' Compensation:**

29 **13.4.2.1** The Retained Party shall secure and maintain, and require all  
30 Subcontractors to secure and maintain, workers' compensation insurance complying with the statutory  
31 limits of the State of Oregon in accordance with ORS Chapter 656, either as: (a) a carrier-insured employer;  
32 or (b) self-insured employer.

33 **13.4.2.2** Such worker's compensation insurance shall insure all persons or  
34 entities employed in performing services under the Retained Party Contract and shall provide employer's  
35 liability coverage, including broad form all states protection, if applicable, voluntary compensation, and  
36 Federal endorsement. The employer's liability coverage shall have the following limits: (a) Bodily Injury by  
37 Accident: \$1,000,000 each accident; (b) Bodily Injury by Disease \$1,000,000 each employee; and (c) Bodily  
38 Injury by Disease: \$1,000,000 policy limit.



1                   **13.4.2.3**       The Retained Party shall require proof of such Workers'  
2 Compensation Insurance by receiving and keeping on file a certificate of insurance from each  
3 Subcontractor or anyone else directly employed by either the Retained Party or its Subcontractors.

4                   **13.4.3 Commercial General Liability (CGL)**

5                   **13.4.3.1**       The Retained Party shall be an insured on the Wrap or obtain, at  
6 Retained Party's expense, and keep in effect during the term of the Retained Party Contract and for such  
7 longer period as specified below, CGL Insurance on a standard ISO occurrence form, with minimum limits  
8 of not less than \$2,000,000 per occurrence and \$2,000,000 in the general aggregate. The Commercial  
9 General Liability insurance shall contain no exclusions other than those noted on the standard ISO form  
10 and those that are not objectionable to the City in its sole discretion, shall specifically include Contingent  
11 Liability/Independent Contractor coverage, and shall contain the following specific limits of liability and  
12 be subject to the following provisions:

13                   **13.4.3.2**       Personal and Advertising Injury liability limits of not less than  
14 \$2,000,000 per occurrence.

15                   **13.4.3.3**       Products and Completed Operations liability limits of not less  
16 than \$2,000,000 in the aggregate.

17                   **13.4.3.4**       The CGL coverage required by this Agreement must be kept in  
18 effect until the expiration of the statute of repose for design and construction defects.

19                   **13.4.4 Automobile Liability**

20                   **13.4.4.1**       The Retained Party shall obtain, at Retained Party's expense, and  
21 keep in effect during the term of the Retained Party Contract, Automobile Liability Insurance covering  
22 owned, non-owned and hired vehicles. This coverage may be combined with the Commercial General  
23 Liability Insurance policy. The combined single limit per occurrence shall not be less than \$2,000,000.  
24 Endorsements CA9948 and MCS-90 are required if the Retained Party is transporting any type of  
25 hazardous materials. This policy must be kept in effect for two (2) years after completion of the project.

26                   **13.5 Insurance Requirements Applicable to Peregrine and All Retained Party Contracts**

27                   **13.5.1**       The premiums and deductibles for all insurance required by this Section 13 are to  
28 be paid by Peregrine or its Retained Parties, as applicable.

29                   **13.5.2**       All required insurance (excepting workers' compensation and the umbrella policy  
30 required by Section 23.1.3) shall be primary coverage and non-contributory with regard to insurance  
31 maintained by the City and shall be for the benefit of the City and except for workers' compensation,  
32 Builder's Risk, pollution and professional liability, shall list "the City and its bureaus, officers, agents, and  
33 employees" as additional insureds with respect to liability and defense of suits arising out of the activities  
34 performed by, or on behalf of, Peregrine, including not only ongoing operations but also completed  
35 operations on the ISO form 2010 or CG 2037 form (2004 edition or equivalent).

36                   **13.5.2.1**       The "additional insured" requirement shall also apply to  
37 Products/Completion Operations coverage. If for any reason Retained Party cannot obtain such coverage  
38 from its insurer, it shall obtain at Retained Party's expense, and keep in effect during the term of the

1 Retained Party Contract, Owners and Contractors Protective Liability Insurance, including  
2 Products/Completed Operations coverage for up to 24 months after Final Completion, naming the City of  
3 Portland, its officers, employees and agents as Named Insured with not less than a \$2,000,000 limit per  
4 occurrence, \$2,000,000 Products/Completed Operations Aggregate and \$2,000,000 general aggregate.  
5 This policy must be kept in effect for 24 months following Final Completion.

6 **13.5.3** All required insurance shall be obtained from a financially sound insurance  
7 company, rated not less than A- in Best's Rating Guide, authorized to do business in the State of Oregon.

8 **13.5.4** The Builder's Risk policy shall provide that the waiver of recovery (subrogation)  
9 provided in Section 23.6 shall not invalidate or have any adverse effect on the liability of the insurer.

10 **13.5.5** All required insurance shall provide that such policies or certificates shall not be  
11 canceled without prior written notice to the City's Spectator Venues Program Manager. Insurance  
12 certificates shall contain a provision that states substantially the following: "The insurance described in  
13 this certificate shall not be canceled or materially altered without giving the City's Spectator Venues  
14 Program Manager sixty (60) days written notice in advance of that action, except for cancellation due to  
15 non-payment of premiums, in which case at least ten (10) Business Days prior written notice must be  
16 given to the City's Spectator Venues Program Manager." In addition, there shall be no cancellation, non-  
17 renewal, material change, or potential exhaustion of aggregate limits without thirty (30) days written  
18 notice from the Retained Party, Peregrine, or the insurer(s) to the City's Spectator Venues Program  
19 Manager. To the extent certificates of insurance contain words to the effect that Peregrine or the Retained  
20 Party shall "endeavor to send notice of cancellation" or similar language, Peregrine or the Retained Party  
21 shall require its insurer(s) to send such notice by making sure that the words "endeavor to" or similar  
22 words are removed from the certificate.

23 **13.5.6** Peregrine and all Retained Parties shall provide the City's Spectator Venues  
24 Program Manager with certificates of insurance and additional insured endorsements signed by the  
25 companies issuing such policies evidencing all coverage required by this Agreement using ISO form  
26 numbers to identify the specific coverage that has been obtained and the effective dates of the insurance  
27 policies. The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees and  
28 will reflect the other requirements of this Section 13. For Retained Parties, such documentation shall be  
29 provided to the City Spectator Venues Program Manager before performance by a Retained Party of any  
30 Work on the Project. Failure to comply with the reporting provisions of the Retained Party Contract shall  
31 not affect the coverages provided to the City of Portland and its officers, employees and agents. For  
32 Peregrine, such documentation shall be provided to the City Spectator Venues Program Manager prior to  
33 the commencement of construction of the Project. Thereafter, Peregrine and all Retained Parties shall  
34 provide the City with an opportunity to review such policies (including the declarations page, standard  
35 text, and all amendments and endorsements) at a location in Portland, Oregon at any time during normal  
36 business hours provided the City has given Peregrine or the Retained Party notice of its desire to review  
37 such policies at least two (2) Business Days in advance. At least thirty (30) days prior to the expiration of  
38 any such policy, Peregrine or the Retained Party shall provide a copy of the renewal certificate to the City,  
39 and promptly thereafter provide the City with copies of such renewal policies.

40 **13.5.7** The City's Spectator Venues Program Manager will review the certificates for  
41 approval. The City's Spectator Venues Program Manager may reject any proposed certificate if the  
42 insurance proposed to be provided is not the same as the coverage required by this Agreement, may  
43 reject the certificate if it is unclear, or require that the underlying policy be presented for review. If the



1 City's Spectator Venues Program Manager determines that the certificates are unclear, the Retained Party  
2 shall provide revised certificates that clearly show the insurance required by this Agreement has been  
3 obtained. Review or approval of the City's Spectator Venues Program Manager of any insurance certificate  
4 does not excuse Peregrine or the Retained Party from providing the insurance required by this Agreement.

5 **13.5.8** Any deductible in excess of \$100,000 shall be disclosed to the City in writing prior  
6 to beginning performance of any Work by the Retained Party, and is subject to the City's Spectator Venues  
7 Program Manager approval.

8 **13.5.9 Negligence of City**

9 Nothing in this Section 13 requires Peregrine or a Retained Party or its insurer to provide insurance  
10 to the City for claims arising out of the death or bodily injury to persons or damage to property caused, in  
11 whole or in part, by the negligence of the City.

12 **13.5.10 Claims of Damage**

13 Peregrine and each Retained Party shall defend, indemnify, and hold the City harmless from any  
14 and all claims of damage, including attorney fees and costs, resulting from Peregrine's or the Retained  
15 Party's activities in regard to notification of utilities and emergency service providers.

16 **13.5.11 All insurance coverage obtained by the Retained Party and Peregrine:**

17 **13.5.11.1** Shall not be affected by any insurance coverage otherwise  
18 existing;

19 **13.5.11.2** Shall protect each insured in the same manner as though a  
20 separate policy had been issued to each, notwithstanding the naming of any number of additional  
21 insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the  
22 policy beyond the amount, or amounts, for which the insurer would have been liable if only one person  
23 or entity had been named as the insured;

24 **13.5.11.3** Shall permit partial or beneficial occupancy or use of the Project  
25 by Peregrine in advance of Substantial Completion without cancellation or discontinuance of coverage. In  
26 that event, Peregrine and the Retained Party shall agree upon the time when partial occupancy or use of  
27 the Project by Peregrine shall occur. If the insurance coverage provided by the Retained Party requires  
28 consent of the Insurer before such occupancy or use occurs, the insurance policy shall also state that such  
29 consent shall not be unreasonably withheld. The City, Peregrine, and Retained Party shall take reasonable  
30 steps to obtain consent of the insurance company or companies and agree to take no action, other than  
31 upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation,  
32 lapse, or reduction of insurance.

33 **13.5.12** All requirements set forth in this Section 13.5 that reasonably should apply to  
34 coverages that survive termination of this Agreement shall also survive termination of this Agreement  
35 until the expiration of the applicable coverage requirement under this Section 13, at which time the  
36 requirements under this Section 13.5 shall terminate and cease to have any effect with regard to the  
37 expired coverage requirement (for example, and not as a limiting factor, requirements to provide  
38 certificates of insurance and to name specified parties as additional insureds).



1           **13.6 Waiver of Recovery**

2           Neither Peregrine nor the City nor the Contractor shall be liable to any other Party or the  
3 Contractor or to any insurance company (by way of subrogation or otherwise) insuring any other Party or  
4 the Contractor for any loss or damage to property or injury to persons, even though such loss or damage  
5 might have been occasioned by the negligence of such Party or the Contractor, its agents or employees,  
6 if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such  
7 loss or damage. This Section 13.6 shall survive the termination of this Agreement.

8           **13.7 Failure to Maintain Insurance**

9           If Peregrine fails or refuses to procure or maintain the insurance required by this Section 13, after  
10 five (5) days prior notice to Peregrine, the City shall have the right, at its election, to procure and maintain  
11 such insurance, in which event, any reasonable premium paid by the City, plus interest at the rate of  
12 Default Interest computed from the date such premium is paid by the City, shall be due and payable by  
13 Peregrine to the City on the first day of the month following the date on which such premium was paid.  
14 The City shall give prompt notice to Peregrine of the payment of any premium stating the amount paid.  
15 This Section 13.7 shall survive the termination of this Agreement until the expiration of such insurance  
16 requirement under this Section 13, at which time the provisions of this Section 13.7 shall terminate and  
17 cease to have any effect with regard to the expired insurance requirement.

18           **13.8 Proceeds Disposition**

19           **13.8.1** Unless otherwise agreed by Peregrine and City in writing, insurance proceeds  
20 with respect to loss or damage to the Expansion Improvements, under the provisions of a policy of  
21 insurance, shall be used for the repair and restoration of the Expansion Improvements in accordance with  
22 the 100% Construction Documents approved by the City, pursuant to Section 14. To the extent that such  
23 proceeds exceed the costs of such repair or restoration, such excess shall be distributed as provided in  
24 Section 14.3. If the insurance proceeds are less than the costs of such repair and restoration, the  
25 provisions of Section 14 shall control. This Section 13.8.1 shall survive termination of this Agreement.

26           **13.8.2** Insurance proceeds from the CGL policy referred to in Section 13.1.2 shall be used  
27 to indemnify the Parties from third party claims.

28           **13.9 Changes in Insurance Requirements**

29           Any modification or variation from the insurance requirements in this Agreement shall be made  
30 by the City Risk Management Office or by the CAO, whose decision shall be final. Such action will not  
31 require a formal Agreement amendment, but may be made by administrative action. Until Final  
32 Completion of the Project, the City shall have the right to annually review the insured limits under this  
33 Section 13 and make changes deemed appropriate by the City in its reasonable discretion.

34           **SECTION 14 DAMAGE OR DESTRUCTION DURING CONSTRUCTION**

35           Until Final Completion, the damage and destruction provisions in Section 12 of the Operating  
36 Agreement will apply only to those parts of the Stadium where no construction of the Expansion  
37 Improvements is taking place. If the Operating Agreement is terminated in accordance with Section 12.3

1 termination. The payment or other award from the condemnor attributable to the value of the Expansion  
 2 Improvements or the Expansion Site ("Award") shall be distributed as provided in Section 13.1.2 of the  
 3 Operating Agreement. As used in this Section 15, the term "Substantial Portion" means the Taking of any  
 4 portion of the Stadium that would substantially interfere with the construction or operation of the  
 5 Expansion, as reasonably determined by Peregrine and reasonably approved by the City.

## 6 15.2 Partial

7 15.2.1 If less than a Substantial Portion of the Expansion Improvements is the subject of  
 8 a Taking, or if a Substantial Portion or more of the Expansion Improvements is the subject of a Taking but  
 9 neither Peregrine nor the City terminates this Agreement as provided in Section 15.1 and the Award is  
 10 sufficient to restore the remaining Expansion Improvements to a condition that makes them functionally  
 11 sufficient for the purpose for which they were constructed, then: (a) the Award shall be distributed as  
 12 provided in Section 13.1.2 of the Operating Agreement and (b) Peregrine shall restore the remainder of  
 13 the Expansion Improvements not affected by the Taking to a condition that makes them function in  
 14 substantially the same manner and character as they were before the Taking Date, and this Agreement  
 15 shall continue in effect. Such restoration shall be in accordance with new plans prepared and approved  
 16 by the City in the same manner as the 100% Design Development Documents and the 100% Construction  
 17 Documents as provided for in Section 8.

18 15.2.2 If the costs of restoring the Expansion Improvements to the condition referred to  
 19 in Section 15.2.1 exceed the amount of the Award (the "Condemnation Deficiency"), then the provisions  
 20 of Section 14.2 shall apply to the Condemnation Deficiency as though the Condemnation Deficiency was  
 21 an Insurance Deficiency.

## 22 15.3 Distribution in the Event of Substantial Taking

23 15.3.1 If this Agreement is terminated on account of a Substantial Taking pursuant to  
 24 Section 15.1, then the condemnation Award shall be allocated between the Parties and paid as  
 25 provided for Condemnation proceeds in Section 13.1.2 of the Operating Agreement. If the Parties are  
 26 unable to agree on the above allocation, or the court hearing the Taking does not establish the allocation,  
 27 then the matter shall be resolved through Dispute Resolution.

## 28 15.4 Applicability of Provisions

29 The provisions of this Section 15 shall be applicable to the Expansion Improvements until they are  
 30 all Substantially Complete and thereafter the provisions regarding condemnation as contained in the  
 31 Operating Agreement shall control.

## 32 SECTION 16 DEFAULT; REMEDIES

### 33 16.1 Default

34 16.1.1 The default or failure of a Party (not otherwise excused) to perform a material  
 35 obligation imposed on that Party under this Agreement shall be an Event of Default on the part of such  
 36 Party if the following conditions are met: (a) the non-defaulting Party has served a written notice of  
 37 default or demand for performance on the defaulting Party specifying the nature of the alleged default  
 38 and the actions required to cure the alleged default; and (b) (i) if the matter is subject to Dispute

1 Resolution, the Dispute Resolution has been concluded and has determined that a default does exist on  
2 the part of the defaulting Party, and the defaulting Party has not cured or diligently commenced the curing  
3 of the default within a reasonable time following the determination of Dispute Resolution, or (ii) if the  
4 matter has not been referred for resolution under the Dispute Resolution, the defaulting Party has not  
5 cured or diligently commenced the curing of the default within a reasonable time following the receipt of  
6 notice of default or demand for performance under (a) above, and the defaulting Party has not diligently  
7 prosecuted such cure to completion. For purposes of this Section 16, a reasonable time shall be: (w) ten  
8 (10) Business Days in the case of a failure to pay a sum of money or Peregrine's failure to maintain the  
9 effectiveness of the LOC through Final Completion; (x) ten (10) Business Days in the case of a failure to  
10 give an approval or execute a document; (y) thirty (30) Business Days in the case of obligations that can  
11 be performed within such time; and (z) such time as is reasonably appropriate under the circumstances  
12 in the case of obligations that cannot be performed within thirty (30) Business Days, provided that the  
13 defaulting Party has commenced to cure said default as early as reasonably possible within such thirty  
14 (30) Business-Day period and has diligently prosecuted such cure to completion.

15 **16.1.2** In the case of Peregrine's obligation under this Agreement to comply with the  
16 terms of the Good Neighbor Agreement, a Violation, as defined in the Good Neighbor Agreement, for  
17 which Peregrine has paid the levied fine or performed whatever is required by the Code Hearings Officer,  
18 shall not constitute an Event of Default, but such Violation will constitute an Event of Default if Peregrine  
19 fails to pay the fine or perform whatever is required by the Code Hearings Officer.

## 20 **16.2 Remedies**

21 **16.2.1** Subject to the limitations on the City's liability set forth in Section 16.3, and the  
22 limitations on termination as provided in Section 17.2 the City and Peregrine shall have all rights available  
23 to them at law or in equity arising out of a breach or default of the other Party under this Agreement  
24 (including the breach of any representation or warranty by the other Party), including but not limited to  
25 the right to specific performance, the right to enforce a Dispute Resolution determination under Section  
26 11, and the rights to pursue payment of any amounts owed or claimed to be owed by a Party under this  
27 Agreement and the right to seek such recovery, damages, or other relief, as may be available at law or in  
28 equity, except as may be explicitly limited by this Agreement, suffered by a Party and caused by a material  
29 breach or default by the other Party or by the failure of the other Party to follow a determination rendered  
30 pursuant to Dispute Resolution. Any provision under this Agreement to the effect that the City bears no  
31 responsibility for, or is not obligated to contribute to, a cost increase or Cost Overrun shall not be read to  
32 limit any recovery, damages, or other relief for any cost increase or Cost Overrun caused by a negligent  
33 act or omission of the City, or its agents or representatives, in its proprietary capacity under this  
34 Agreement.

## 35 **16.3 Limitations on Liability of the Parties**

36 **16.3.1** The City shall not be liable for damages to Peregrine or any other person or entity  
37 by reason of delays in the commencement, prosecution, and completion of design and construction of  
38 the Expansion Improvements arising from the City's exercise of its regulatory authority, unless the City  
39 would have been liable in the absence of this Agreement.

40 **16.3.2** Subject to Section 16.3.1, the provisions of this Section 16.3 shall not limit actions  
41 by either Party, following any Dispute Resolution pursuant to this Agreement, to: (a) enforce payments of  
42 money owed by the other Party or otherwise required to be expended by the other under the provisions



1 of this Agreement; (b) to enforce express indemnification provisions in this Agreement; or (c) to enforce  
2 other monetary or non-monetary obligations of the other.

3 **16.3.3** No member, officer, agent, consultant, or employee of the City shall be personally  
4 liable to Peregrine, its members or Affiliates, in the event of any default or breach by City or for any  
5 amounts owed to Peregrine, its members or Affiliates, or on any obligation under the terms of this  
6 Agreement. Other than the obligations under the Performance and Completion or Make Whole Guaranty,  
7 no member, manager agent, consultant, or employee of Peregrine shall be personally liable to the City in  
8 the event of any default or breach by Peregrine or for any amounts owed to the City or on any obligation  
9 under the terms of this Agreement.

10 **16.3.4** Notwithstanding anything in this Agreement or any Related Agreement to the  
11 contrary, the City and Peregrine waive any and all claims against the other Party for consequential  
12 damages arising out of or relating to this Agreement or the Party's default, performance, or  
13 nonperformance hereof, including without limitation damages for indirect expenses, losses of use,  
14 income, profit, financing, business reputation, or loss of services of persons.

## 15 **16.4 Indemnification**

16 **16.4.1 By Peregrine to the City.** Subject to any applicable limitations on liability stated  
17 elsewhere in the Agreement or at Law, Peregrine shall hold harmless, indemnify, and defend the City and  
18 its officers, employees, and agents (collectively, the "City Indemnitees") from and against all claims,  
19 demands, penalties, and causes of action of any kind or character relating to or arising from this  
20 Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on  
21 account of personal injury, death, damage to property, or violation of law, which arises out of, or results  
22 from, the acts or omissions of Peregrine, its officers, employees, agents, Affiliates, consultants,  
23 contractors, or subcontractors.

24 **16.4.2 By the City to Peregrine.** Subject to any applicable limitations on liability stated  
25 elsewhere in the Agreement or at Law, including the Oregon Constitution and the Oregon Tort Claims Act,  
26 City shall hold harmless, indemnify, and defend Peregrine and its officers, employees, and agents from  
27 and against all claims, demands, penalties, and causes of action of any kind or character relating to or  
28 arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any  
29 person on account of personal injury, death, damage to property, or violation of law, which arises out of,  
30 or results from, the acts or omissions of the City, its officers, employees, or agents.

## 31 **16.5 Unenforceability**

32 If a court having jurisdiction over the Parties holds that this Agreement or any of the Related  
33 Agreements is invalid or unenforceable in whole or in part for any reason, including without limitation by  
34 reason of application of any provision of the City Charter, then the City and Peregrine covenant to each  
35 other to use Reasonable Efforts to mitigate their respective damages by attempting to put the Parties  
36 back into the same position that they would have been but for the holding of invalidity or unenforceability.  
37 To this end, if this Agreement or any of the Related Agreements is held to be invalid or unenforceable by  
38 reason of application of the City Charter, then the City shall have the option to require Peregrine to enter  
39 into an agreement or series of agreements on terms which are identical in effect to the agreement or  
40 agreements which were held to be invalid or unenforceable, which would give the Parties the full benefit  
41 of their bargain as if such Agreement and Related Agreements were totally valid and enforceable in every

1 respect. Notwithstanding the foregoing, if the City does not exercise its option in a manner which gives to  
 2 Peregrine the full benefit of its bargain, Peregrine shall retain all rights and remedies otherwise available  
 3 at law, equity, or pursuant to this Agreement and all of the Related Agreements.

4 This SECTION 16 shall survive the termination of this Agreement.

5 **SECTION 17** TERM AND TERMINATION

6 **17.1 Term**

7 **17.1.1** The term of this Agreement shall commence as of the Effective Date and shall  
 8 terminate pursuant to the provisions of Section 17.2 (the "Term").

9 **17.1.2** The Parties acknowledge that, prior to the Effective Date, the Parties have  
 10 performed certain of their obligations contemplated by this Agreement. Each Party acknowledges that to  
 11 its knowledge, there are no existing defaults by the other Party with respect to those obligations  
 12 performed by the Parties prior to the Effective Date.

13 **17.2 Termination**

14 **17.2.1** This Agreement shall terminate only upon the occurrence of any of the following  
 15 circumstances. Except as provided for in this Section 17.2, there is no other right to terminate this  
 16 Agreement.

17 **17.2.1.1** Upon written agreement of both Parties;

18 **17.2.1.2** At the election of the non-defaulting Party, upon occurrence of  
 19 an Event of Default and the defaulting Party's failure to cure the Event of Default as required by Section  
 20 16.1.1;

21 **17.2.1.3** Under the limited circumstances set forth in Section 14 relating  
 22 to damage or destruction and Section 15 relating to eminent domain;

23 **17.2.1.4** In the event Peregrine files a voluntary petition for bankruptcy,  
 24 Peregrine is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty (60)  
 25 days of when filed, or Peregrine makes a general assignment for the benefit of its creditors; or

26 **17.2.1.5** In the event the City files a voluntary petition for bankruptcy, the  
 27 City is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty (60) days  
 28 of when filed, or the City makes a general assignment for the benefit of its creditors.

29 **17.2.1.6** Upon issuance of the Certificate of Final Completion.

30 **17.2.2** Notwithstanding the termination of this Agreement pursuant to Section 18.2, the  
 31 Parties' rights and obligations arising prior to termination and reimbursements or payments (including  
 32 payments of Insurance Proceeds) from the other Party shall survive and remain in full force and effect to  
 33 the extent necessary to enforce the terms thereof.

1           **17.3 City Right to Suspend and Carry out Work**

2           **17.3.1** If the Contractor fails to correct work which is not in accordance with the  
3 requirements of this Agreement within a reasonable time or fails to carry out work in accordance with  
4 this Agreement and the applicable Retained Party Contract, the City may direct Peregrine to order the  
5 Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

6           **17.3.2** If Peregrine defaults or neglects to carry out the work in accordance with this  
7 Agreement, and fails within fourteen (14) days after receipt of written notice from the City to commence  
8 and continue correction of such default or neglect with diligence and promptness, the City may, without  
9 prejudice to other remedies, commence and continue to carry out the work and Peregrine shall promptly  
10 reimburse the actual, out-of-pocket costs thereof to the City, including compensation for additional  
11 services and expenses made necessary by such default, neglect, or failure. The right of the City to take  
12 over the work pursuant to this Section shall not give rise to any duty on the part of the City to exercise  
13 this right. This right shall be in addition to, and not in restriction of, the City's other rights under this  
14 Agreement, and shall not excuse Peregrine or the Contractor from failure of performance of this  
15 Agreement.

16   **SECTION 18**    **CITY'S POLICE POWER; REGULATORY AUTHORITY**

17           **18.1 Police Power.**

18           The Parties recognize that the City must retain its regulatory powers and that the City's regulatory  
19 bodies, in carrying out their responsibilities, should do so independently without influence by other City  
20 official and employees. The City agrees that such other City officials and employees, during the term of  
21 this Agreement, shall not seek to influence the City's regulatory bodies in a manner that would otherwise  
22 deny to Peregrine the benefits of the City's covenants and obligations under this Agreement or would  
23 otherwise allow the City to accomplish a result that would not be permitted under the terms and  
24 conditions of this Agreement. This Section 18 shall not restrict the City's staff from performing its usual  
25 regulatory review, comment, and advisory functions. Nothing in this Agreement shall be construed to limit  
26 or affect the City's exercise of its police powers nor the ability of Peregrine to bring claims against the City  
27 in its regulatory capacity in accordance with applicable law.

28           **18.2 Regulatory Authority**

29           By entering into this Agreement and the Related Agreements, the City is specifically not obligating  
30 itself or any other agency with respect to any discretionary or regulatory action relating to development  
31 or operation of the Expansion Improvements, including, but not limited to, rezoning, variances,  
32 environmental clearances, regulatory plan reviews, code compliance, or any other governmental agency  
33 approvals or regulatory actions which are or may be required or authorized. When reasonably feasible to  
34 do so, the City will work in good faith to facilitate the cooperation of, and coordination among, the City's  
35 Bureaus with respect to the Expansion. This Section 18 shall survive the termination of this Agreement.

36   **SECTION 19**    **COMPREHENSIVE TRANSPORTATION MANAGEMENT PLAN**

37           Peregrine shall retain a transportation consultant to measure and evaluate current traffic and  
38 transportation-related conditions near the Stadium, as they currently exist, to extrapolate potential future  
39 impacts based on Peregrine's projected Event mix at the newly renovated Stadium, and to recommend



1           **20.14 Entire Agreement**

2           This Agreement, the Related Agreements and the agreements referred to in those agreements  
3 constitute the entire agreement between the Parties as of the Effective Date.

4           **20.15 Modifications**

5           Any modifications to this Agreement must be made in writing and executed by the Parties.

6           **20.16 Assignment; Successors and Assigns**

7           Peregrine shall not assign or transfer this Agreement or any interest in this Agreement or  
8 encumber or grant a security interest in this Agreement or in any interest under this Agreement, nor shall  
9 there be any changes in the manager of Peregrine (other than those resulting from death or incapacity),  
10 without the express written approval of the City, which approval shall be in the City's sole and absolute  
11 discretion. Following Substantial Completion of all Expansion Improvements, the applicable provisions of  
12 the Related Agreements shall govern assignments and transfers of interest. Subject to the terms of this  
13 Agreement, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall  
14 inure to the benefit of and bind the successors and assigns of the Parties, and the obligations of the Parties  
15 and the remedies for the breach thereof, shall further be covenants and conditions running with the  
16 Stadium.

17           **20.17 Access to and Confidentiality of Documents**

18                   **20.17.1 Inspection of Records.**

19           Each Party agrees that, upon the reasonable prior notice from the other, it will make available to  
20 the requesting Party its records, reports and information pertaining to the Expansion for review, but not  
21 copying (unless agreed upon by the non-requesting Party), so as to inform the requesting Party and to  
22 enable the requesting Party to determine the other Party's compliance with the terms of this Agreement.  
23 Notwithstanding the foregoing, the City's obligation to make records, reports and information available  
24 shall be subject to ORS Chapter 192.

25                   **20.17.2 Confidentiality.**

26           Each Party agrees to keep as confidential any document or information that meets the  
27 requirements of ORS 192.502(4) and is identified by the originating Party as being confidential, by means  
28 of marking the document or information as being confidential. A Party agrees to only communicate  
29 confidential information submitted by the other Party to its legal counsel and other consultants or as  
30 required by court order or by the District Attorney upon an appeal of a public record's request. If the City  
31 is served with a public records request for the production of Peregrine's confidential information provided  
32 to the City by Peregrine, pursuant to ORS 192.410, et seq., then the City, at least seven (7) days before  
33 the City permits inspection of the records by the person making the request, will provide Peregrine with  
34 a copy of the request, so that Peregrine may take steps to prevent the disclosure of the confidential  
35 information. Notwithstanding the foregoing, the Parties acknowledge that, as a public entity, the City  
36 must comply with and will comply with ORS 192.410, et seq. In the event Peregrine objects to the  
37 production of documents and the City does not provide the documents to the person making the request,  
38 and the District Attorney or a court later orders production of the documents, Peregrine shall pay for all