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**REDEVELOPMENT AGREEMENT**

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**between**

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

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**and**

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

11

**Effective Date: \_\_\_\_\_, 2010**

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Exhibits

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<u>No.</u>	<u>Caption</u>
1.1	Memorandum of Agreement
1.2	Definitions
2.3	Exclusive Use and Guaranty Agreement
2.6	Project Funding Agreement
2.8	Project Completion Guaranty
3.1	State Law Requirements
3.2.1	Peregrine PDA Retained Parties and Conditionally Approved Retained Parties
3.2.5	Retained Party Contract Requirements
3.5	Right of Entry Permits
6.1	PGE Park Legal Description and Permitted Encumbrances
6.2.1	Amended and Restated MAC Easement
6.2.2	License to Use Easement
6.3	Existing Agreements
10.1	Initial Project Budget
11.2.1	List of Schematic Drawings
11.2.2	Existing FF&E
11.2.3	New FF&E
12.8.3	City's Acknowledgement Form
13.1	Project Schedule
17.5	Revenue Stream Guaranty
18.2.1	Form of Application for Payment
18.2.2	Certificate for Payment-Supporting Documentation
20.1	Qualifications and Indemnifications Relating to City's Representations and Warranties
22.2.7	Memorandum of Operating Agreement
22.3	Reimbursement Schedule



1           C.       The City and Peregrine desire that the Stadium become the home playing  
2 field for a professional soccer team that is part of MLS. The City desires that Peregrine operate a  
3 renovated and upgraded Stadium, on behalf of the City, on a long-term basis, and in doing so,  
4 meet certain public goals of the City and operate the facility to a high industry standard.

5           D.       In the spring of 2008, MLS announced its intention to take proposals for  
6 two additional expansion franchises that would begin play in 2011. Peregrine approached the  
7 City and indicated that it wanted to submit a proposal to MLS for one of the available expansion  
8 franchises. On March 11, 2009, the City Council approved Resolution No. 36687 (as amended)  
9 that declared the City's support for Peregrine's bid to bring an MLS franchise to the City and  
10 approved a proposed transaction between the City and Peregrine. On March 20, 2009, MLS  
11 announced its conditional award of an MLS expansion franchise for Portland, subject to the  
12 preparation and execution of definitive agreements and unconditional financial commitments in a  
13 manner that would permit the MLS franchise to commence play at the Stadium at the beginning  
14 of its 2011 schedule.

15           E.       On July 23, 2009, the City Council adopted an exemption to the  
16 competitive bidding process for the renovation of the Stadium pursuant to Ordinance No.  
17 183035. Peregrine was selected as the sole source developer for such renovations based on and  
18 in accordance with findings attached to that Ordinance. In addition, as part of Ordinance No.  
19 183036, the City Council approved a Predevelopment Agreement between the City and Peregrine  
20 (the "Predevelopment Agreement"), which sets forth the rights and responsibilities of the Parties  
21 prior to execution of this Agreement and the Related Documents and which provides for the  
22 sharing of certain predevelopment costs by the City and Peregrine. The Predevelopment  
23 Agreement was signed by the Parties on August 22, 2009, and was not extended prior to its

1 expiration on October 1, 2009. Also, on July 23, 2009, the City Council, by Resolution No.  
2 36717 (as amended), approved the Proposed MLS Transaction Terms (the "Term Sheet"),  
3 superseding Resolution No. 36687 and setting forth the basic business terms for the renovation of  
4 the Stadium and the operation of the renovated Stadium as the home field for Peregrine's MLS  
5 soccer team.

6 F. The City and Peregrine desire to set forth the terms and conditions for the  
7 Project, as provided in this Agreement, which terms and conditions shall be consistent with the  
8 Predevelopment Agreement and the Term Sheet.

9 NOW, THEREFORE, in consideration of the mutual promises of the Parties set  
10 forth in this Agreement the Parties agree as follows:

## 11 **SECTION 1 DEFINITIONS AND OTHER CONVENTIONS**

### 12 **1.1 Use of Related Agreements**

13 Those agreements and documents referred to in Section 2 shall be executed by the  
14 Parties on or prior to the Council Meeting, the Closing, or after the Closing as specified in  
15 Sections 21 and 22 (collectively, the "Related Agreements"). For convenience and economy, the  
16 Related Agreements listed in Section 21.1 are attached as exhibits to this Agreement or have  
17 been provided to the City Council pursuant to Section 21.1. By convention, these Related  
18 Agreements will be referenced in this Agreement with the description "in agreed form."

### 19 **1.2 Defined Terms**

20 Some defined terms are defined in Exhibit 1.2. Other terms are defined in the  
21 body of this Agreement. Unless a contrary intent is expressed in a Related Agreement, defined  
22 terms shall have the same definition in this Agreement and each of the Related Agreements.

### 1.3 Standard of Consent or Approval; Authority to Approve

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

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

### 1.4 Action of Peregrine

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



1    **SECTION 2 IDENTIFICATION OF RELATED AGREEMENTS**

2           At the times required by Section 21, the relevant parties, including third parties,  
3 shall have completed and entered into the following agreements which comprise the Related  
4 Agreements:

5           **2.1    Operating Agreement**

6           An Operating Agreement between the City and Peregrine, which Agreement will  
7 be effective on January 1, 2011 (the "Operating Agreement"). The existing Operating  
8 Agreement between the City and Shortstop LLC (as assignee of Beavers PCL Baseball, LLC)  
9 dated January 1, 2006 (the "Shortstop Operating Agreement") will remain in effect until, by its  
10 terms, it terminates on December 31, 2010.

11           **2.2    Good Neighbor Agreement**

12           A modification, among Peregrine, the City, the Goose Hollow Foothills League,  
13 and the Northwest District Association of the Good Neighbor Agreement, dated April 14, 2000  
14 (the "Good Neighbor Agreement").

15           **2.3    Exclusive Use and Guaranty Agreement**

16           The Exclusive Use and Guaranty Agreement attached hereto as Exhibit 2.3.

17           **2.4    [Reserved]**

18           **2.5    PSU Football Agreement**

19           Peregrine and the City acknowledge an understanding between Portland State  
20 University and Shortstop, LLC pursuant to which Portland State University will not play its 2010  
21 home games at the Stadium. Peregrine agrees that Portland State University may play its home  
22 games at the Stadium starting with the 2011 season and thereafter, all on terms and conditions  
23 acceptable to Peregrine and Portland State University.

1           **2.6    Project Funding Agreement**

2           A Project funding agreement among the City, Peregrine and U.S. Bank National  
3 Association attached hereto as Exhibit 2.6 (the "Project Funding Agreement") pursuant to which  
4 those parties agree to the timing of and the method of contributing funds for the construction of  
5 the Project Improvements.

6           **2.7    Memoranda of Agreements**

7           Short-form agreements between the City and Peregrine to be recorded against the  
8 Stadium property to put third parties on notice of the existence of this Agreement, the Operating  
9 Agreement, and the Exclusive Use and Guaranty Agreement.

10          **2.8    Project Completion Guaranty**

11          An agreement among the City, Peregrine and the Guarantors attached hereto as  
12 Exhibit 2.8 guaranteeing Peregrine's completion of the Project Improvements (the "Project  
13 Completion Guaranty").

14          **2.9    Construction Mitigation Plan**

15          A plan to mitigate the impact of construction on surrounding areas for each of the  
16 Phase One Work and the Phase Two Work, acceptable to the City (each, a "Construction  
17 Mitigation Plan" and collectively, the "Construction Mitigation Plans").

18          **2.10   Community Outreach Plan**

19          A Community Outreach Plan acceptable to the City. The Community Outreach  
20 Plan is part of the Good Neighbor Agreement.

21          **2.11   Revised Comprehensive Transportation Management Plan**

22          An update to the Comprehensive Transportation Management Plan that was  
23 approved by the City as Ordinance No. 17442, on May 18, 2000 (the "CTMP").

1           **2.12 Architectural Services Agreement**

2           The Architectural Services Agreement between Peregrine and Ellerbe Becket, a  
3 partnership (the "Architect"), for the performance of the Architectural Work dated September 11,  
4 2009 (the "Architectural Services Agreement"). The City approved the Architectural Services  
5 Agreement on September 10, 2009.

6           **2.13 General Construction Contract**

7           The Agreement Between Owner and Contractor between Peregrine, as owner, and  
8 Turner Construction Company, as general contractor, and the General Conditions for the  
9 Contract for Construction, for the construction of the Project Improvements (collectively, the  
10 "General Construction Contract").

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

12           **3.1 Master Developer**

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

1 utility abandonments and relocations, if any). Peregrine shall comply with or shall cause the  
2 Contractor to comply with the requirements set forth on Exhibit 3.1.

### 3 3.2 Approval of Retained Parties

4 3.2.1 All consultants and contractors, including but not limited to the architects,  
5 engineers, other design professionals, the general contractor, project managers, construction  
6 managers, subconsultants with proposed subcontracts in excess of \$100,000, subcontractors to  
7 the General Contractor with a proposed subcontract in excess of \$100,000, and construction  
8 inspectors, retained or proposed to be retained by Peregrine or by the companies Peregrine retains  
9 for the Project (each a "Retained Party") shall be approved or disapproved in writing by the City  
10 according to this Section 3.2. Whether or not subject to City approval under this Section 3.2, all  
11 subcontractor contracts and subconsultant contracts will comply with all applicable Laws. The  
12 City has approved in accordance with the Predevelopment Agreement the Retained Parties listed  
13 in Exhibit 3.2.1 as "Peregrine PDA Retained Parties" for the work referred to in the identified  
14 contracts with such Retained Parties described in Exhibit 3.2.1, and the provisions of Sections  
15 3.2.2 through 3.2.5 have been deemed fulfilled for such Retained Party Contracts (except as  
16 relating to contract amendments after the Effective Date). Following the expiration of the  
17 Predevelopment Agreement, City staff continued to review and to give conditional approval of  
18 Retained Parties and Retained Party Contracts. Those "conditionally approved" Retained Parties  
19 and Retained Party Contracts are noted as such in Exhibit 3.2.1. The City hereby approves the  
20 Retained Parties listed on Exhibit 3.2.1 as "conditionally approved" for the work referred to in  
21 the identified contracts with such conditionally approved Retained Parties, acknowledges that the  
22 provisions of Section 3.2.2 through 3.2.4 have been deemed fulfilled for such Retained Party  
23 Contracts (except as relating to contract amendments after the Effective Date), and ratifies the

1 actions of City staff with respect to such conditionally approved Retained Parties. If Exhibit  
2 3.2.1 identifies only a Retained Party but does not identify its contract, then the contract with  
3 such Retained Party shall remain subject to all of the following provisions of this Section.

4 **3.2.2** To obtain City approval of a Retained Party, a Retained Party Contract, or  
5 both, as applicable, Peregrine shall submit to the City: (a) a written statement of the  
6 qualifications of each proposed Retained Party (other than the Peregrine PDA Retained Parties  
7 and the other Retained Parties listed on Exhibit 3.2.1) including the Retained Party's financial  
8 capacity, expertise, reputation, insurance coverage and history of (i) completion of projects on  
9 time and on budget and (ii) non-compliance with the City's policies and regulations related to  
10 construction of City projects, if any; (b) a statement of the nature of the work to be performed by  
11 the proposed Retained Party; and (c) a copy of the proposed contract with the Retained Party.  
12 The City shall have five (5) Business Days after receipt of a complete submittal to approve or  
13 disapprove of the proposed Retained Party based on the standards of subsections (a)-(c) of this  
14 Section 3.2.2 and to approve or disapprove of a Retained Party Contract based on the standards  
15 of subsections (i)-(vi) of this Section 3.2.2 below. The City shall have ten (10) Business Days  
16 after receipt of a complete submittal to approve or disapprove of a proposed Retained Party  
17 Contract. Any disapproval by the City shall be in writing and shall include a statement of  
18 reasons for the disapproval. The City shall approve or disapprove of each Retained Party and  
19 each Retained Party Contract and any amendment to that contract except Change Orders with  
20 respect to the Project Improvements which shall be governed by Section 12.4, so long as such  
21 Change Orders are limited to changes in the contract work, price, and schedule and do not  
22 otherwise amend the relevant Retained Party Contract. In considering proposed Retained Party  
23 Contracts, the City will consider: (i) the reasonableness of the proposed charges and contract

1 terms; (ii) whether the contract, and the work product of the contract, may be assigned to the  
2 City; (iii) the extent to which the contract allows the City to audit the books and records of the  
3 Retained Party; (iv) whether the Retained Party agrees to comply with the City's policies and  
4 regulations related to construction of City projects, if applicable; (v) whether the contract names  
5 the City as an insured or additional insured, as appropriate; and (vi) whether the contract allows  
6 the City to participate in claims that in any way involve the City.

7           **3.2.3** If the City fails to approve or disapprove of a proposed Retained Party, a  
8 Retained Party Contract, or both, within the five (5) or ten (10) Business Day period, as  
9 applicable, the proposed Retained Party or Retained Party Contract shall be deemed disapproved.  
10 If there is a deemed disapproval pursuant to the preceding sentence, upon written demand by  
11 Peregrine (which demand shall clearly state in capital letters that it is given pursuant to this  
12 Section 3.2.3 and that failure of the City to respond within five (5) Business Days after receipt  
13 shall be deemed approval of the proposed Retained Party or Retained Party Contract, as  
14 applicable), the City shall either approve or disapprove of the proposed Retained Party, the  
15 proposed Retained Party Contract, or both, within five (5) Business Days after receipt of such  
16 demand. Any disapproval shall be accompanied by a written statement of the reasons for  
17 disapproval. If the City fails to approve or disapprove the proposed Retained Party within five  
18 (5) Business Days after receipt of Peregrine's written demand following a deemed disapproval,  
19 the proposed Retained Party, the proposed Retained Party Contract or both, as applicable, shall  
20 be deemed approved.

21           **3.2.3.1** If the City provides written notice of Peregrine of its disapproval  
22 of a Retained Party or a Retained Party Contract or both, then within five (5) Business Days of  
23 receipt of such disapproval notice, Peregrine may submit a modified submittal to the City for

1 reconsideration. Following such resubmittal, the Parties shall work cooperatively and in good  
2 faith to resolve disagreements regarding a Retained Party or a Retained Party Contract. If the  
3 City and Peregrine have not reached agreement on a Retained Party or a Retained Party Contract  
4 or both within ten (10) Business Days of such re-submission, then the Retained Party and  
5 Retained Party Contract shall be deemed disapproved, and Peregrine shall not again propose the  
6 Retained Party or the Retained Party Contract.

7           **3.2.4** In order to facilitate the City's approval of subcontracts under the General  
8 Construction Contract, prior to the Closing, Peregrine shall have caused the Contractor to  
9 provide the City with the standard form subcontract it proposes to use, and the City will have ten  
10 (10) Business Days to review that standard form. Thereafter, Peregrine will submit subcontracts  
11 in redlined form to show changes made to the approved standard form. The City will have three  
12 (3) Business Days to review each subcontract.

13           **3.2.5** All Retained Party Contracts will be expressly subject to the provisions set  
14 forth in Exhibit 3.2.5, entitled "Retained Party Contract Requirements," except as provided  
15 below. Subsequent to the Council Meeting, Peregrine shall not execute any Retained Party  
16 Contract unless it includes, expressly or by reference, the Retained Party Contract Requirements.  
17 Prior to the Council Meeting, Peregrine has not entered into any Retained Party Contracts  
18 relating to the Project Improvements which have not been approved by the City pursuant to the  
19 terms of the Predevelopment Agreement other than the Retained Party Contracts listed as  
20 conditionally approved in Exhibit 3.2.1. Peregrine may request the non-inclusion of some or all  
21 of the Retained Party Contract Requirements, and the City will use its reasonable judgment in  
22 either approving or disapproving such a request.

1           **3.2.6** No review, approval, deemed approval, objection or failure to object by the  
2 City under this Section 3.2 shall be deemed to constitute an approval, determination or waiver of  
3 professional or contracting licensing requirements of the Retained Party, or the adequacy of the  
4 proposed contract with the Retained Party for the work to be performed, or compliance with any  
5 legal requirements pertaining to the Retained Party, the work, or the Retained Party Contract. No  
6 review, approval, deemed approval, objection or failure to object by the City under this Section  
7 3.2 shall be deemed to constitute the approval, determination or waiver of Peregrine's  
8 performance of the terms and conditions of this Agreement (other than Peregrine's compliance  
9 with the provisions of this Section 3.2) or the compromise of the City's exercise of its regulatory  
10 powers. No approval given by the City under this Section 3.2. will be deemed a representation or  
11 warranty by the City of any kind and will not give rise to any City liability for a Retained Party's  
12 deficient performance, defects or errors in the Design Documents, or specific terms in any  
13 Retained Party Contract; provided that Peregrine may rely on the City's approval of a contract as  
14 a representation that the approved Retained Party Contract contains language obligating the  
15 Retained Party to comply with the City's policies and regulations related to construction of City  
16 projects, including without limitation, the Retained Party Contract Requirements.

17           **3.2.7** If a Retained Party should default under its Retained Party Contract,  
18 Peregrine shall promptly enforce such Retained Party Contract and, if appropriate, promptly  
19 replace the Retained Party subject to the City's approval as provided for in this Section 3.2.

20           **3.3     Third Party Beneficiary; Contingent Assignment of Retained Party**  
21           **Contracts**

22           The City is an intended third-party beneficiary of each Retained Party Contract.  
23 Peregrine hereby assigns to the City, for security purposes, each Retained Party Contract,



1 provided that the City may only realize upon this security assignment only upon termination of  
2 this Agreement by the City. For purposes of ORS 79.0102, this Agreement constitutes a security  
3 agreement. Peregrine acknowledges and agrees that on or after the Effective Date, the City may  
4 complete and file UCC Financing Statements so as to perfect the above assignment.

### 5 **3.4 Exemption From Bidding Process**

6 By Ordinance No. 183035, dated July 23, 2009, the City exempted, on stated  
7 conditions, this Agreement, the Related Agreements and the design, construction, management  
8 and operation of the Project Improvements from the public bidding process under ORS  
9 279.015(2) (the "Exemption Ordinance"). Peregrine will maintain, or cause the Contractor to  
10 maintain, records sufficient to prepare the report required by ORS 279.103, which Peregrine shall  
11 submit to the City within thirty (30) days after Substantial Completion.

### 12 **3.5 Inspection Rights Prior to Closing**

13 Prior to the Effective Date, the City granted Peregrine the right to come upon the  
14 Project Site at reasonable times to inspect, analyze, and conduct tests pursuant to one or more  
15 right of entry permits, which are listed on Exhibit 3.5. The City also previously granted  
16 Peregrine additional rights of entry pursuant to permits to allow the Contractor to mobilize and  
17 prepare for construction and to commence the Phase One Work.

### 18 **3.6 Tanner Creek**

19  
20 **3.6.1** Peregrine and the City acknowledge and agree that Tanner Creek, a storm  
21 and sanitary sewer line (the "TC Line"), runs through the Project Site and that the new structure  
22 to be constructed in the Southeast portion of the Stadium (the "New Structure") will be built  
23 above a portion of the TC Line.

1           **3.6.2** Peregrine shall not commence construction of the foundation for the New  
2 Structure until the Bureau of Environmental Services (“BES”) has approved Peregrine’s  
3 foundation plans and the Bureau of Development Services (“BDS”) has approved the structural  
4 elements of Peregrine’s foundation plans. In addition, neither Peregrine nor Peregrine’s agents,  
5 employees, contractors, subcontractors or consultants (collectively, the “Peregrine Related  
6 Parties”) shall commence any pile work until BDS has approved Peregrine’s pile plan and BES  
7 has approved Peregrine’s plan for protecting the TC Line during pile work. The City  
8 acknowledges that Peregrine has commenced preparatory work in accordance with a Revocable  
9 Permit of Entry dated January 6, 2010 and that BES has approved Peregrine’s plans to protect the  
10 TC Line during such preparatory work.

11           **3.6.3** Peregrine shall prepare plans for a freestanding foundation system that can  
12 withstand a total failure of the TC Line without material damage to the New Structure. In  
13 addition, (a) the New Structure shall be designed and constructed to provide the City with access  
14 to the TC Line, with dimensions and specifications as required by BES, to enable the City to  
15 repair, replace and maintain the TC Line, or (b) Peregrine shall abandon the lamphole that is  
16 located in the area where the New Structure will be built by demolishing the lamphole and  
17 sealing the opening in the TC Line with a reinforced concrete lid, all in accordance with BES’  
18 requirements. Such plans will be prepared by Peregrine and submitted together with any required  
19 structural reports to BES and BDS for review and approval. The plans and structural reports will  
20 be reviewed in accordance with the time periods and process set forth for the City’s review and  
21 approval of Retained Party Contracts. The processes set forth in Subsections 3.6.2 and 3.6.3 are  
22 not intended to create processes in addition to BES’ and BDS’ typical regulatory processes, but  
23 are intended to inform and to be a part of such regulatory processes.

1           **3.6.4** 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  
3 TC Line or within ten (10) horizontal feet of the TC Line, or park such vehicles above the TC  
4 Line, without first obtaining BES review and approval of a plan, including such geotechnical  
5 reports as BES may require, providing for the protection of the TC Line in a manner that is  
6 acceptable and determined to be adequate by BES. During all preparatory work and construction  
7 of the foundations and structure, and at any time when heavy vehicles or equipment are moving  
8 across, within ten (10) horizontal feet of, or parked on top of the TC Line, Peregrine shall video  
9 monitor the TC Line not less frequently than weekly and shall provide BES with copies of such  
10 videos. For purposes of this Section 3.6, "heavy vehicles or equipment" shall mean any vehicle  
11 or piece of equipment, including cranes and concrete trucks, with a gross weight, including load,  
12 of 12,000 pounds or more.

13           **3.6.5** No review, approval, deemed approval, objection or failure to object by the  
14 City under this Section 3.6 shall be deemed an approval or determination by the City of the  
15 adequacy of Peregrine's proposed reports and plans. No approval given by the City under this  
16 Section 3.6 will be deemed a representation or warranty by the City of any kind and will not give  
17 rise to any liability of the City with respect to the TC Line.

18           **3.6.6** If the acts or omissions of Peregrine or the Peregrine Related Parties cause  
19 damage to the TC Line, Peregrine shall be responsible for paying BES' cost to repair the TC  
20 Line. If the acts or omissions of the City or the City Related Parties cause damage to the TC  
21 Line, the City shall be responsible for paying the cost to repair the TC Line. If the acts or  
22 omissions of a party other than Peregrine, the Peregrine Related Parties, the City or the City

1 Related Parties cause damage to the TC Line, Peregrine shall have no responsibility for the cost  
2 of repairing the TC Line.

3           **3.6.7** Peregrine acknowledges that the TC Line could experience impaired  
4 functioning due to age, capacity limitations, natural casualty or other factors. Except for  
5 negligence claims asserted by Peregrine against the City, Peregrine hereby waives any and all  
6 claims against the City for consequential damages arising out of or relating to a failure or  
7 surcharge of the TC Line, including, without limitation, claims for indirect expenses, loss of use,  
8 income, profit, financing, business reputation or loss of services of persons. Peregrine shall hold  
9 harmless, indemnify and defend the City and the City Indemnitees from and against all Claims  
10 arising out of or resulting from the failure of Peregrine or the Peregrine Related Parties to strictly  
11 comply with this Section 3.6. Any claims by Peregrine based on the alleged negligent  
12 maintenance of the TC Line by the City shall be asserted in tort and not in contract. This Section  
13 3.6.7 shall survive the termination of this Agreement.

### 14           **3.7 Compliance with Laws**

15           With respect to all actions taken by Peregrine under the terms of this Agreement  
16 and any Related Agreements, Peregrine agrees to conform to and comply with all applicable  
17 Laws and to defend, indemnify, and hold the City harmless from any cost, loss, damage, penalty,  
18 charge, or liability based upon, and to the extent of, Peregrine's claimed or actual non-  
19 compliance with applicable Laws, except claims made by the City where it is determined that  
20 Peregrine is not in violation of applicable laws.

### 21           **3.8 License to Come Upon the Stadium**

22           Subject to the existing Operating Agreement between the City and Shortstop LLC,  
23 the City hereby grants Peregrine and Peregrine's Retained Parties and their respective employees,

1 agents, and independent contractors a license to come upon, enter, use, and occupy the Project  
2 Site and the Stadium, all as may be reasonably necessary to perform Peregrine's obligations  
3 under this Agreement. Peregrine, for itself and its affiliate Shortstop LLC, the current operator of  
4 the Stadium, agrees that the City may inspect Peregrine's activities under Sections 3.5, 3.6 and  
5 3.7 at reasonable times and in a manner that does not unreasonably interfere with events at the  
6 Stadium.

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

8 Peregrine will undertake and complete all actions required by Section 4.1 through  
9 4.9 in support of the City's stated public goals (collectively, the "Public Objectives"). Peregrine  
10 shall submit to the City, within twenty (20) Business Days after written request, written reports  
11 from time to time at reasonable intervals (based on the nature of the information involved and in  
12 such form as may be reasonably required by the City), detailing compliance with Sections 4.1,  
13 4.2, 4.3 and 4.7 and achievement of the Public Objectives identified by the City in its request,  
14 certifying compliance with the CTMP, the Good Neighbor Agreement, and the City's directed  
15 wage program, and certifying that the Franchise Agreement has not been terminated. Peregrine  
16 shall implement any reasonable suggestions of the City as to how to better fulfill the Public  
17 Objectives, subject to the availability of funds in the Project Budget and Peregrine's contractual  
18 commitments to MLS. Peregrine shall cause all of Peregrine's and the Retained Parties' books  
19 and records related to fulfillment of the Public Objectives to be made available for City review  
20 upon reasonable advance notice. Failure of compliance with the requirements of this Section 4  
21 by Peregrine or any Retained Party shall constitute a Peregrine Event of Default. The City is  
22 obligated to comply with the public goals and objectives in Sections 4.8 and 4.9 below.

1           **4.1 Compliance with Retained Party Contract Requirements**

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

6           **4.2 Community Outreach Plan; Construction Mitigation Plan**

7           **4.2.1** Pursuant to this Agreement and the Good Neighbor Agreement, Peregrine  
8 has developed a Community Outreach Plan. City approval of the Community Outreach Plan  
9 shall be a condition to Closing.

10           **4.2.2** Peregrine has developed a Construction Mitigation Plan for the Phase One  
11 Project Improvements, and pursuant to the Good Neighbor Agreement, will develop a  
12 Construction Mitigation Plan for the Phase Two Project Improvements, both of which shall be  
13 subject to approval by the City. City approval of the Construction Mitigation Plan for the Phase  
14 One Project Improvements shall be a condition to Closing. City approval of the Construction  
15 Mitigation Plan for the Phase Two Project Improvements shall be a post-Closing condition.

16           **4.3 Employees**

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

19           **4.4 Comprehensive Transportation Management Plan**

20           The City and Peregrine have agreed to update the CTMP. The cost of preparing  
21 the updated CTMP shall be a Project Cost.

1           **4.5     Good Neighbor Agreement**

2           The Good Neighbor Agreement to be executed by the City and Peregrine and the  
3 neighborhood associations identified therein on or before Closing and Peregrine shall perform its  
4 obligations thereunder throughout the term of this Agreement.

5           **4.6     Major League Soccer Agreement**

6           On or before the Council Meeting, Peregrine obtained and provided to the City a  
7 certificate of MLS (the "MLS Certificate") confirming that MLS and Soccer United Marketing,  
8 L.L.C. ("SUM"), a Delaware limited liability company and an affiliate of MLS, have entered in  
9 to the Franchise Agreement with Peregrine and that, subject to the satisfaction of certain  
10 conditions set forth therein, and the compliance with the covenants and terms thereof, Peregrine  
11 will be granted an MLS franchise.

12           **4.7     Sustainability**

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

17           **4.8     Labor Matters**

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

1           **4.9 Neighborhood Parking**

2           The City will work with Peregrine, Lincoln High School, the Goose Hollow  
3 Foothills League, the Goose Hollow Business Association, and the MAC to consider developing  
4 a parking facility to serve the parking needs of the area around the Stadium. The costs related to  
5 this undertaking are not Project Costs.

6           **SECTION 5 TEAM ACQUISITIONS AND MATTERS**

7           **5.1 Soccer Team Acquisition**

8           Peregrine shall have met or shall meet the following performance milestones, all  
9 of which shall be conditions to the City's obligation to Close:

10           **5.1.1** On or before the Council Meeting, Peregrine entered into an agreement  
11 pursuant to which Peregrine, MLS and SUM have agreed, subject to ordinary qualifications, that  
12 Peregrine shall become a member of MLS and SUM and be awarded an expansion franchise  
13 therein, subject only to the Closing, the transactions contemplated by this Agreement and the  
14 satisfaction of certain conditions set forth therein and compliance with the covenants and terms  
15 thereof (the "Franchise Agreement").

16           **5.1.2** So long as the conditions precedent in the Franchise Agreement have been  
17 satisfied or waived, the Franchise Agreement shall become effective upon Closing and the  
18 distribution and release from escrow of a portion of Peregrine's purchase price for the Team. At  
19 least ten (10) Business Days prior to Closing, Peregrine shall provide the City's outside legal  
20 counsel, for review by the CAO, in the CAO's reasonable judgment with input and advice from  
21 the City Attorney and outside legal counsel, evidence that the Franchise Agreement will become  
22 effective upon Closing and release from escrow of a portion of Peregrine's purchase price for the  
23 Team.



1           **5.1.3** By the Closing Date, Peregrine shall have provided the City with an  
2 executed Exclusive Use and Guaranty Agreement.

3           **5.2 Triple-A Baseball Team.**

4           Peregrine shall indemnify, defend and hold harmless the City and the City  
5 Indemnitees from any and all Claims from the Pacific Coast League, the Portland Beavers, or  
6 both, related to the inability of the Portland Beavers to play at the Stadium and in the City after  
7 the conclusion of the 2010 Season. The City covenants and agrees not to enter into any  
8 agreement or arrangement that would permit the Portland Beavers or any other baseball team to  
9 use the Stadium for any baseball games during any year on or after the Substantial Completion  
10 Date, so long as Peregrine intends to use the Stadium for its home MLS games during any such  
11 calendar year and the Operating Agreement is in full force and effect.

12           **SECTION 6 TITLE TO THE STADIUM; EXISTING AGREEMENTS**

13           **6.1 General**

14           A legal description of the Project Site is attached as Exhibit 6.1. The City  
15 represents and Peregrine acknowledges that the City owns fee simple title to the Project Site,  
16 except as noted in the Permitted Exceptions. The Parties obtained and reviewed a preliminary  
17 title report from Chicago Title Insurance Company and determined and listed on Exhibit 6.1 the  
18 liens and encumbrances that currently affect the Project Site (the "Permitted Exceptions"). In the  
19 event that a later title report reveals other exceptions created by the City prior to Closing (the  
20 "Objectionable Exceptions"), then the City shall remove those Objectionable Exceptions which  
21 would interfere with Peregrine's ability to perform its obligations under this Agreement;  
22 provided that if the City fails to remove such Objectionable Exceptions then Peregrine shall have

1 no obligation to proceed to Closing and the City shall have no liability to Peregrine for such  
2 failure.

### 3 **6.2 Multnomah Athletic Club**

4 **6.2.1** Peregrine and the City acknowledge that a portion of the Project Site (i.e.,  
5 the MAC Parcel) is not owned by the City and is owned by the MAC. The City's right to use the  
6 MAC Parcel is established and governed by the MAC Easement. The City's rights under the  
7 MAC Easement are subject to the Permitted Exceptions. Prior to the Council Meeting, Peregrine  
8 negotiated an amended and restated MAC Easement sufficient to enable Peregrine to construct  
9 the Project Improvements. The amended and restated MAC Easement is attached to this  
10 Agreement as Exhibit 6.2.1.

11 **6.2.2** At Closing, the City and Peregrine shall enter into and record a License to  
12 Use Easement in the form attached as Exhibit 6.2.2, which will grant Peregrine the right to use  
13 the MAC Easement area during the term of this Agreement.

### 14 **6.3 Existing Agreements Affecting the Stadium**

15 As of the Closing Date, the Parties acknowledge and agree that the Stadium will  
16 be subject to only the Existing Agreements described on attached Exhibit 6.3. If any party claims  
17 to be a party to an agreement other than the Existing Agreements, which affects the Stadium after  
18 the Closing, then the Party that is a party to such other agreement shall be responsible for such  
19 other agreement, shall use Reasonable Efforts to terminate such other agreement or to modify  
20 such other agreement so as not to increase Project Costs, shall be responsible for any damages on  
21 account of the termination of such other agreement as City Costs or Peregrine Costs, as  
22 applicable, and shall pay as City Costs or Peregrine Costs, as applicable, any additional Project  
23 Costs incurred as a result of such other agreement.

1           **6.4 No Interest in Project Site**

2           Peregrine will operate the Stadium pursuant to the Operating Agreement and will  
3 have the rights of a license granted thereunder. Peregrine acknowledges that until January 1,  
4 2011, Peregrine has no right to operate the Stadium and that Shortstop LLC will continue to  
5 operate the Stadium through December 31, 2010 pursuant to the terms of an operating agreement  
6 between the City and Shortstop LLC, successor-in-interest to Beavers PCL Baseball, LLC, dated  
7 January 1, 2006. Peregrine will have no real property rights in the Stadium or the Project Site,  
8 and this Agreement does not grant any such rights to Peregrine.

9           **SECTION 7 EVALUATION OF PGE PARK, PRELIMINARY ARCHITECTURAL**  
10           **AND ENGINEERING WORK**

11           **7.1 Evaluation of the Stadium**

12           In accordance with the terms of the Predevelopment Agreement, Peregrine  
13 completed any and all studies, analyses, investigations, surveys and tests of the Stadium and the  
14 Project Site that Peregrine desired or needed to undertake, including a structural evaluation of the  
15 Stadium (collectively, the "Investigations"). Peregrine is satisfied with all Investigations. The  
16 City and Peregrine own the work product that resulted from these evaluations, and Peregrine has  
17 provided copies of all of the work product to the City with Peregrine retaining copies. The City  
18 shall have no liability to Peregrine or its Retained Parties on account of any error in any of the  
19 Investigations.

20           **7.2 Preliminary Architectural Work**

21           Peregrine has retained the Architect to perform the Architectural Work with  
22 respect to the renovation of the Stadium, pursuant to the Architectural Services Agreement. Prior  
23 to Closing, Peregrine shall pay the actual cost of the Architectural Work in accordance with the

1 Architectural Services Agreement. The cost of the Architectural Work is included in the Project  
2 Budget, and upon funding of the Project Budget, amounts paid by Peregrine for Architectural  
3 Work prior to Closing shall be deemed part of and, pursuant to Section 22.3, shall reduce the  
4 amount of the Peregrine Contribution to be deposited into the Project Payment Account.  
5 Peregrine shall provide the City with a copy of all Design Documents (as defined below)  
6 produced pursuant to the Architectural Services Agreement. The City and Peregrine shall both  
7 own the Design Documents, as described in the Architectural Services Agreement, and the City  
8 shall be entitled to use the Design Documents as provided in this Agreement.

9 **SECTION 8 ENVIRONMENTAL COMPLIANCE**

10 **8.1 Environmental Assessment**

11 **8.1.1** In 1999, the City, using GRI, Inc., conducted a Level 1 Environmental  
12 Assessment dated May 27, 1999 and a Level 2 Environmental Assessment dated November 3,  
13 1999 of the Stadium to determine whether the Stadium contained any Environmental Hazards  
14 that required remediation. Peregrine, using Shaw Environmental, Inc., conducted its own Phase I  
15 Environmental Site Assessment and received a report dated June 24, 2009 (the "Shaw Report").  
16 Copies of the 1999 environmental reports have been provided to Peregrine (together, with any  
17 and all environmental assessments conducted by Peregrine, including the Shaw Report the  
18 "Environmental Assessments"). The Shaw Report recommends no further studies or analyses of  
19 the environmental condition of the Project Site.

20 **8.1.2** The Parties acknowledge that asbestos-containing material ("ACM") is  
21 present in the press box, and in mastic in the metal roof flashings and at duct penetrations, and  
22 lead based paint is present in the upper bleachers. Peregrine shall cause all Retained Parties to

1 conduct Remediation Work (if necessary in order to comply with applicable Laws) and all work  
2 related to the Project Improvements in compliance with Environmental Laws.

3 **8.1.3** If Environmental Hazards are discovered on the Project Site during  
4 demolition, excavation, grading and construction that are not disclosed in the Environmental  
5 Assessments or the Shaw Report, Peregrine shall prepare and implement a plan for an additional  
6 environmental assessment ("Supplemental Environmental Assessment"). Peregrine shall submit  
7 any Supplemental Environmental Assessment to the City for its review and reasonable approval  
8 prior to any applicable submittal to DEQ. The City shall use its Reasonable Efforts to complete  
9 its review and approval of the Supplemental Environmental Assessment within the following  
10 time periods: (a) five (5) Business Days after receipt from Peregrine, if the Supplemental  
11 Environmental Assessment describes an Environmental Hazard that is considered by industry  
12 standards to be commonly encountered and/or that the Environmental Hazard that is susceptible  
13 of Environmental Remediation by a single or commonly known standard or procedure; or (b) ten  
14 (10) Business Days after receipt from Peregrine, if the Supplemental Environmental Assessment  
15 describes an Environmental Hazard that is considered by industry standards not to be commonly  
16 encountered and/or the Environmental Remediation involves a selection from various alternative  
17 standards or procedures; and (c) if the City, after using Reasonable Efforts, is unable to review  
18 and approve the Supplemental Environmental Assessment within such five (5) or ten (10)  
19 Business-Day period, the City shall have a reasonable period thereafter so long as the City  
20 diligently pursues such review and approval to completion. The foregoing time periods shall be  
21 considered the "Reasonable Efforts Response Period" and shall be equally applicable to the  
22 City's review and approval of a Supplemental Environmental Remediation Plan or any  
23 modifications or amendments to such documents. Peregrine shall submit to the City a copy of

1 any drafts of the Supplemental Environmental Assessment, as they are prepared, for the City's  
2 review and comment. If either the City or Peregrine reasonably believes that the proposed  
3 Supplemental Environmental Assessment should be the subject of a review by another  
4 environmental consultant, prior to submission to DEQ, the other Party shall not unreasonably  
5 withhold its consent to such further review. Whenever an Environmental Assessment,  
6 Supplemental Environmental Assessment, Environmental Remediation Plan or any modification  
7 or amendment thereto is required by this Agreement to be submitted to the City prior to submittal  
8 to DEQ, Peregrine shall nevertheless submit such document to DEQ prior to submittal to the  
9 City, if required by applicable Law.

10 In the case of discovery of an Environmental Hazard requiring immediate action,  
11 nothing in this Section shall prevent Peregrine from undertaking the immediate action necessary  
12 to remediate the Environmental Hazard to the extent required to alleviate the immediate concern,  
13 and stabilize the environmental condition of the Project Site sufficiently to otherwise proceed  
14 under this Section; provided that Peregrine will make reasonable attempts to reach the City's  
15 Construction Representative before taking action. Costs of such immediate action will be  
16 allocated according to the remainder of this Section 8. An Environmental Hazard requires  
17 immediate action if a reasonable person would take action to remediate the Environmental  
18 Hazard to control a threat to human health and the environment prior to continuing the Project  
19 Improvements.

## 20 8.2 Environmental Remediation Plan

21 8.2.1 If required by a Supplemental Environmental Assessment, Peregrine with  
22 the assistance of an environmental consultant reasonably acceptable to the City, shall develop a  
23 remediation plan for the Project Site ("Environmental Remediation Plan"). The Environmental

1 Remediation Plan shall include an estimate of the cost of implementing the Environmental  
2 Remediation Plan. Peregrine shall submit any Environmental Remediation Plan to the City prior  
3 to any applicable submittal to DEQ, for the City's review and reasonable approval, which review  
4 and approval shall be completed within the Reasonable Efforts Response Period. Peregrine shall  
5 submit, as necessary, the Environmental Remediation Plan to DEQ for its review and approval,  
6 but only after the City's review and approval. If either the City or Peregrine reasonably believes  
7 that the proposed Environmental Remediation Plan should be the subject of a review by another  
8 environmental consultant, prior to submission to DEQ, the other Party shall not unreasonably  
9 withhold its consent to such further review. Peregrine shall provide the City with a copy of the  
10 Environmental Remediation Plan, as approved by DEQ, promptly after receipt of such approval.

11 **8.2.2** With respect to Environmental Hazards identified in a Supplemental  
12 Environmental Assessment that require Remediation Work, Peregrine shall cause the Contractor  
13 to develop its construction schedule in coordination with the Remediation Work so as to  
14 minimize any adverse impact on Project Costs, and Peregrine will coordinate its Remediation  
15 Work with the Contractor so as to minimize any adverse impact on Project Costs.

16 **8.3 Compliance with Environmental Permits**

17 **8.3.1** Peregrine shall comply with all permits and licenses issued in connection  
18 with any Supplemental Environmental Assessment or Environmental Remediation Plan in, on,  
19 under or about the Project Site. Peregrine and City shall notify each other of any Releases of  
20 Environmental Hazards onto or from the Project Site, of which the notifying party has  
21 knowledge, as soon as is reasonably possible.

1           **8.4 Payment of Environmental Costs**

2           **8.4.1** "Environmental Remediation Costs" means (a) the total of the costs of  
3 preparation of all Supplemental Environmental Assessments and Environmental Remediation  
4 Plans, and (b) the cost of Environmental Remediation as required by an Environmental  
5 Remediation Plan. Any disputes under this Section 8.4 shall be resolved by Dispute Resolution.

6           **8.4.2** All Environmental Remediation Costs relating to Environmental Hazards  
7 which were present in, on or at the Project Site on the Closing Date and of which Peregrine had  
8 knowledge, was aware, or reasonably should have been aware, shall be Project Costs.

9           **8.4.3** All Environmental Remediation Costs relating to concealed Environmental  
10 Hazards which were present in, on or at the Project Site on the Closing Date and of which  
11 Peregrine has no knowledge, was not aware, and should not have reasonably been aware, shall be  
12 City Costs.

13           **8.4.4** All Environmental Remediation Costs relating to Environmental Hazards, if  
14 any, created at, negligently exacerbated, or placed in or on the Project Site by Peregrine, or the  
15 Peregrine Related Parties after the Closing Date or subsequent to Peregrine's entry onto the  
16 Project Site, if granted prior to the Closing Date, are Peregrine Costs.

17           **8.4.5** All Environmental Remediation Costs relating to Environmental Hazards, if  
18 any, created at, exacerbated, or placed in or on the Project Site by the City, or the City's  
19 employees, agents or contractors after the Closing Date are City Costs.

20           **8.4.6** All Environmental Remediation Costs relating to Environmental Hazards, if  
21 any, created at, exacerbated, or placed in or on the Project Site by a third party, which is not an  
22 agent, employee, contractor, or subcontractor to Peregrine, after the Closing Date are Project  
23 Costs.



1           **8.5    Environmental Indemnifications**

2           **8.5.1** The fact that a Party may be responsible to pay for Environmental  
3 Remediation Costs pursuant to Section 8.4 does not mean that that Party is obligated to  
4 indemnify the other Party from losses on account of the Environmental Hazards and the  
5 Environmental Remediation that gave rise to those Environmental Remediation Costs. The  
6 Parties are only giving the indemnities set forth below. Except for the indemnified persons  
7 specifically mentioned below, no person shall be a third party beneficiary of the provisions of  
8 this Section 8.5 nor shall the provisions of this Section 8.5 be deemed to create a standard of care  
9 or conduct with respect to any such person not specifically mentioned as an indemnified person.

10           **8.5.2** Peregrine shall defend, hold harmless and indemnify the City, its successors  
11 and assigns under this Agreement or the Related Agreements, and its elected and appointed  
12 officers, employees and agents, from any and all Losses arising from the Release by Peregrine or  
13 Peregrine's employees, agents, contractors or sub-contractors, of Environmental Hazards onto,  
14 in, under, over or from the Project Site after the Effective Date, and all costs associated with such  
15 indemnification obligations shall be a Peregrine Cost.

16           **8.5.3** To the extent allowed by Laws and subject to the limitations of Section  
17 8.4.2, the Oregon Constitution and the Oregon Tort Claims Act, the City shall defend, hold  
18 harmless and indemnify Peregrine, its successors and assigns under this Agreement or the  
19 Related Agreements, and its officers, employees and agents, from any and all Losses arising  
20 from (a) the Release by the City or City's employees, agents, contractors or sub-contractors  
21 (excluding Peregrine and each Retained Parties), of Environmental Hazards onto, in, under, over  
22 or from the Project Site after the Effective Date and (b) concealed pre-existing Environmental  
23 Hazards not negligently exacerbated by Peregrine or the Peregrine Related Parties and of which

1 Peregrine has no knowledge, was not aware and should not have reasonably been aware, and all  
2 costs associated with such indemnification obligations shall be a City Cost.

### 3 **8.6 Remediation Work Report**

4 If any Environmental Remediation is performed pursuant to this Section 8,  
5 Peregrine shall provide to the City, on or prior to the date of Substantial Completion of the  
6 Project Improvements, a written report (with maps or diagrams, as necessary for descriptive  
7 purposes) identifying all Remediation Work completed and its location; Remediation Work, if  
8 any, remaining to be done and its location; and any on-going monitoring or other special  
9 procedures, operations, facilities and their location required as a result of the Remediation Work  
10 or the continued or potential existence of Environmental Hazards on the Project Site.

### 11 **8.7 Following Substantial Completion**

12 Following Substantial Completion of all of the Project Improvements, but subject  
13 to the provisions of Section 8.6, the Operating Agreement shall govern and control as to the  
14 respective responsibilities and liabilities of the Parties for Supplemental Environmental  
15 Assessment and Remediation of Environmental Hazards on the Project Site, but the  
16 indemnification provisions of Section 8.8 shall survive and continue to be effective after  
17 Substantial Completion of all the Project Improvements.

### 18 **8.8 Indemnification From Third Parties**

19 The City may seek indemnification or contribution from any third party  
20 potentially liable for any Environmental Hazards on the Project Site. Any net amounts (after the  
21 City's costs of recovery) recovered by the City pursuant to such indemnification or contribution  
22 shall be used to reimburse the original source of payment (i.e., City Costs, Project Costs, or  
23 Peregrine Costs) and the balance, if any, shall belong to the City. Accordingly, for example, if

1 the Environmental Remediation Costs are \$700,000, and were paid as Project Costs, and the City  
2 recovers \$1,000,000 net from responsible third parties, \$700,000 shall be used to repay Project  
3 Costs, and the balance of \$300,000 shall belong to the City without restriction. If Peregrine  
4 believes that the City has a claim for indemnification or contribution from a third party with  
5 respect to the Project Site, or if the City believes that Peregrine has a claim for indemnification or  
6 contribution from a third party with respect to the Project Site, and if after thirty (30) Business  
7 Days after written demand to the Party that would otherwise own the claim for indemnification  
8 or contribution, that Party declines or fails to pursue such claim, then the other Party may  
9 demand, and the Party owning the claim shall not unreasonably withhold or delay, an assignment  
10 to the other Party to pursue any such claim (to the extent such assignment can be lawfully made).  
11 Any net recovery received by Peregrine from pursuing such claim with respect to the Project Site  
12 shall be applied first to repay Peregrine Costs and then to Project Costs.

### 13 **SECTION 9 DISCRETIONARY APPROVALS, CITY COOPERATION**

#### 14 **9.1 Cooperation By City**

15 The City, in its proprietary capacity, but not its regulatory capacity, shall assist  
16 Peregrine and the Retained Parties by providing, promptly after written request, information in its  
17 possession relating to the Project Improvements, the Project Site, City Utilities, Private Utilities  
18 and all other aspects of the Project. Such information shall be provided by the City to Peregrine  
19 merely as an accommodation without any warranty or representation or liability on the part of the  
20 City as to the accuracy of such information or the correctness thereof or the suitability of such  
21 information for the purposes of or use thereof by Peregrine under this Agreement or the Related  
22 Agreements. Peregrine, directly or indirectly through Retained Parties, shall regularly consult  
23 with the City's various Bureaus, the City's Design Commission and their respective staffs for the

1 purpose of keeping the City informed of the design of the Project Improvements; provided,  
2 however, that Peregrine shall comply with City's rules prohibiting or otherwise governing *ex*  
3 *parte* contacts in quasi-judicial proceedings or other proceedings before City bodies. Consistent  
4 with applicable Laws, procedural requirements and staffing availability, the City shall consider  
5 ways to expedite the permits and other approvals and other actions required to be provided or  
6 taken by the City in connection with the design, construction, occupancy and use of the Project  
7 Improvements, provided that the City shall not incur any liability to Peregrine for its failure to do  
8 so.

## 9 9.2 Discretionary Approvals

10 9.2.1 Except as provided in Section 9.2.2, Peregrine shall be responsible for  
11 applying for and obtaining all discretionary Governmental approvals that are necessary for the  
12 construction of the Project Improvements and the operation of the Project. The Parties anticipate  
13 that the discretionary approvals that will be necessary consist of: approval by the City's Design  
14 Commission of Peregrine's design review application, approval by the City Council of the Good  
15 Neighbor Agreement, and approval by the City Council of the CTMP.

16 9.2.2 The City, in its proprietary capacity, initiated a zoning code text amendment  
17 to Chapter 510 of Title 33 of the City Code so as to authorize 15,000 square feet of office space  
18 as a permitted use at the Stadium. The City heard this zoning code text change at the Council  
19 Meeting on January 6, 2010. Peregrine agrees that the current variance from applicable noise  
20 standards in Title 18 of the City Code expires on December 31, 2010, and that Peregrine is  
21 required to renew such variance prior to its expiration.

1           **9.3 Appeals Beyond the City**

2           In the event that any of the discretionary approvals referred to in Section 9.2 are  
3 appealed beyond the City, then the Parties agree to jointly resist any such appeal, each at its own  
4 cost and expense and not as a Project Cost. In the case of such appeals, the Parties agree to  
5 continue with the construction of the Project Improvements, unless Peregrine terminates this  
6 Agreement prior to Closing, or if the Parties are ordered to stop such construction by the City, in  
7 its regulatory capacity, or by the State of Oregon Land Use Board of Appeals, or by a court of  
8 competent jurisdiction. Nothing in this Section 9 compromises or limits the City's regulatory  
9 authority.

10           **9.4 Construction Permits**

11           All permits required to authorize the construction of the Project Improvements,  
12 beyond the approvals referred to in Section 9.2, shall be obtained by Peregrine, and the City  
13 shall, if necessary, join in any permit applications as owner of the Project Site. The fees payable  
14 in obtaining such permits are a Project Cost.

15           **SECTION 10 PROJECT BUDGET**

16           **10.1 Initial Project Budget**

17           The Initial Project Budget sets forth all expected Project Costs as of December 21,  
18 2009. Cost categories or cost items not included in the Initial Project Budget are either City  
19 Costs or Peregrine Costs, unless included in an amendment to the Project Budget approved of by  
20 Peregrine and the City. The Initial Project Budget is attached as Exhibit 10.1.

21           **10.2 Closing Project Budget**

22           Peregrine will revise the Initial Project Budget based on the Contractor's Phase  
23 One GMP (the "Closing Project Budget"). The Closing Project Budget shall include a

1 comprehensive statement of all Project Costs and shall be in the same format as the Initial Project  
2 Budget. Closing shall not occur unless the City has approved of the Closing Project Budget.

### 3 **10.3 Final Project Budget**

4 Peregrine shall prepare and submit a Final Project Budget to the City not later  
5 than five (5) Business Days after Peregrine's receipt of the Contractor's Final GMP. The Final  
6 Project Budget shall include a comprehensive statement of all Project Costs and shall be in the  
7 same format as the Closing Project Budget. Peregrine shall not proceed with the Phase Two  
8 Project Improvements until the City has approved of the Final Project Budget.

### 9 **10.4 Revisions to Project Budget**

10 Peregrine shall revise the Project Budget based upon information from the  
11 Contractor, Architect and other sources. Each revised Project Budget shall be in the same format  
12 as the Initial Project Budget.

### 13 **10.5 Components of Project Budget**

14 Except as provided below, the Initial Project Budget, Closing Project Budget,  
15 Final Project Budget and all updated Project Budgets shall include the following:

16 **10.5.1 Art Budget.** The "Art Budget" shall mean a budgeted amount of 2% of  
17 the Public Contribution to the Project, for public art for the Project required by the City Code and  
18 any applicable intergovernmental agreements and implementing ordinances (the "Art Program").  
19 The amount of the Art Budget is a Project Cost. Peregrine shall cooperate with the City and the  
20 Arts Council to integrate into the design of the Project works of art in accordance with the Art  
21 Program. If the City elects to increase the amount to be spent on art at the Stadium, any  
22 increased amount shall be a City Cost, and the decision to include any additional art shall be  
23 subject to Peregrine's reasonable approval.

1           **10.5.2 Solar Panels.** The City concluded a request for proposal process for the  
2 installation of solar facilities at various locations throughout the City. If the selected respondent  
3 and the City agree to install solar facilities at the Stadium, the cost of installing such solar  
4 facilities will not be a Peregrine Cost or a Project Cost. In addition, the installation of solar  
5 panels at or on the Stadium will be coordinated with the construction and installation of the  
6 Project Improvements, and Peregrine and the Peregrine Retained Parties will cooperate with the  
7 City, and the selected respondent will coordinate all Project Improvements and solar  
8 installations. ORS 279C.527 requires that a specified percentage of the contract amount for the  
9 renovation of a “public building” be spent on the installation of solar energy facilities, unless an  
10 exemption applies. The City has determined that ORS 279C.527 is inapplicable to the Project  
11 Improvements and has received oral confirmation from the Oregon Department of Energy  
12 (“DOE”) of the inapplicability of the statute to the Projects Improvements. The City agrees to  
13 use reasonable efforts to obtain written confirmation of such exemption from DOE. If DOE  
14 determines that ORS 279C.527 does apply to the Project Improvements, Peregrine and the City,  
15 jointly, will use reasonable efforts to challenge DOE’s determination. If that challenge does not  
16 result in a final determination that ORS 279C.527 is inapplicable to the Project Improvements,  
17 then the cost of compliance, if any, shall not be a Project Cost or a Peregrine Cost.

18           **10.5.3 Project Contingency.** The “Project Contingency” shall mean the amount  
19 of \$2,650,000, budgeted by the Parties for use in accordance with Section 11.10.2.

20           **10.5.4 GMP Contingency.** The General Construction Contract contains a  
21 contingency that is within the Project Budget and within the Contractor’s GMP (the “GMP  
22 Contingency”). The use of the GMP Contingency is pursuant to the terms of the General  
23 Construction Contract.

1                   **10.5.5 Closing Project Budget Components.** The Closing Project Budget is  
2 comprised of a series of components including the Contractor's Phase One GMP. The  
3 Contractor's Phase One GMP is composed of elements relating to the physical improvements  
4 comprising the Phase One Project Improvements. The allocations between the components of  
5 the Closing Project Budget and the elements within the Contractor's Phase One GMP may  
6 change based upon subsequent facts and events after establishment of the Closing Project  
7 Budget.

8                   **10.5.6 Final Project Budget Components.** The Final Project Budget is  
9 comprised of a series of components including the Contractor's Final GMP. The Contractor's  
10 Final GMP is composed of elements relating to the physical improvements comprising the  
11 Project Improvements. The allocations between the components of the Final Project Budget and  
12 the elements within the Contractor's Final GMP may change based upon subsequent facts and  
13 events after establishment of the Final Project Budget.

## 14 **SECTION 11 DESIGN AND CONSTRUCTION DOCUMENTS**

### 15 **11.1 Design Contracts and Ownership of Design Documents**

16                   **11.1.1** The Architectural Services Agreement has been approved by the City and  
17 executed by Peregrine.

18                   **11.1.2** Any other Retained Party Contracts for the design and architecture of the  
19 Project Improvements shall provide that basic services will be performed for a fixed fee plus any  
20 reimbursable expenses allowed under the contracts. The fixed fees and related reimbursable  
21 expenses payable under such contracts are Project Costs. Any payments in excess of such fixed  
22 fees for extra services performed, and in excess of the reimbursable expenses of such Retained  
23 Parties under such contracts, shall be allocated as Project Costs, City Costs, or Peregrine Costs,



1 depending upon whether the reason for such extra services or expenses was a Project Cost, City  
2 Cost, or Peregrine Cost. Notwithstanding the foregoing, any charges by a Retained Party relating  
3 to marketing or soliciting for, or negotiating, its Retained Party Contract shall not be a Project  
4 Cost or a City Cost, and Peregrine shall either pay the same as a Peregrine Cost or cause the  
5 Retained Party to waive such charges.

6 **11.1.3** All drawings, specifications, and any other documents prepared by  
7 Retained Parties that are architects, engineers or other professional services consultants for the  
8 Project (collectively, "Design Documents") shall be owned by the City and Peregrine. Peregrine  
9 shall require in its contracts with such Retained Parties that the Retained Parties not use the  
10 Design Documents for any other project without the prior written consent of the City and  
11 Peregrine. As to those Design Documents deemed subject to any form of Intellectual Property  
12 Rights, Peregrine shall cause any such Retained Parties to grant to Peregrine and the City a paid-  
13 up, non-exclusive, world-wide, irrevocable, transferable license, for the Owner and the City to  
14 use, reproduce and have reproduced, and for the Owner and the City to allow others to use,  
15 reproduce and have reproduced, such Design Documents. Submittals or distributions necessary to  
16 meet official regulatory requirements or for other purposes relating to completion of the Project  
17 are not to be construed as a publication in derogation of the Parties' reserved rights. Peregrine  
18 shall cause all Retained Party Contracts to expressly acknowledge the Parties' rights under this  
19 Section.

20 **11.1.4** The provisions of Sections 11.2 through Section 11.8 set forth the  
21 procedure for preparation by Peregrine and review by the City, in its proprietary capacity, of  
22 plans, specifications, and construction drawings for the Project Improvements, and for  
23 establishment of the Contractor's GMP. These provisions are not applicable to the regulatory

1 procedures for application, review, and issuance of permits and approvals of the City and other  
2 governmental organizations necessary for construction of the Project Improvements.

### 3 **11.2 Base Scope, Schematic Drawings, FF&E**

4 **11.2.1 Base Scope.** The Architect has prepared 100% Schematic Drawings for  
5 the Project Improvements and the City approved such Schematic Drawings on October 27, 2009.  
6 The 100% Schematic Drawings are specifically described in the attached Exhibit 11.2.1 and  
7 when taken together with the definitions of Phase One Work and Phase Two Work, constitute the  
8 base scope for the Project Improvements (the "Base Scope").

9 **11.2.2 Existing FF&E.** The Project Improvements include the furniture,  
10 movable fixtures, and equipment referred to in attached Exhibit 11.2.2 (the "Existing FF&E").  
11 The Existing FF&E falls into categories, each a separate column on Exhibit 11.2.2: the Existing  
12 FF&E which will remain at the Stadium or be stored elsewhere during construction, which is  
13 shown in column 1; the Existing FF&E which Peregrine has agreed to remove from the Stadium,  
14 which is shown in column 2; and the surplus equipment which is the property of City and may be  
15 sold or otherwise disposed of by the City in its sole discretion, which is shown in column 3. The  
16 items listed in column 2 of Exhibit 11.2.2 will be disposed of by Peregrine in accordance with  
17 applicable Laws. With respect to the Existing FF&E that will remain at the Stadium, the City  
18 hereby grants Peregrine a license to use this Existing FF&E throughout the term of the Operating  
19 Agreement.

20 **11.2.3 New FF&E.** The Project Improvements also include new furniture,  
21 fixtures, and equipment listed in attached Exhibit 11.2.3 (the "New FF&E"). The New FF&E is  
22 part of the Project, and its cost is a Project Cost. Peregrine agrees to acquire the New FF&E as  
23 necessary to Substantially Complete the Project Improvements. The New FF&E will be owned

1 by the City, will be located at the Stadium and not used elsewhere, and will be used, maintained  
2 and operated subject to the terms of the Operating Agreement.

### 3 **11.3 50% Design Development Documents**

4 **11.3.1** The Architect prepared a complete set of 50% Design Development  
5 Documents for the Project Improvements and submitted these to the City on or about  
6 December 11, 2009. The Architect also prepared 100% Construction Documents for the Phase  
7 One Work, which were submitted to the City on or about December 14, 2009. Prior to the  
8 Effective Date, City staff will have conditionally approved the 50% Design Development  
9 Documents and the 100% Construction Documents for the Phase One Work. Peregrine has  
10 delivered one (1) full-sized set and three (3) half-sized sets of each of the 50% Design  
11 Development Documents and the 100% Construction Documents for the Phase One Work to the  
12 City.

### 13 **11.4 100% Design Development Documents**

14 Prior to Closing, Peregrine, using the Retained Parties, shall have prepared a  
15 complete set of 100% Design Development Documents for the Project Improvements and  
16 submitted such documents to the City, and, assuming the City received the 100% Design  
17 Development Documents at least fifteen (15) Business Days prior to Closing, the City shall have  
18 conditionally approved or disapproved such 100% Design Development Documents. Peregrine  
19 shall deliver one (1) full-sized set and three (3) half-sized sets of the 100% Design Development  
20 Documents. Notwithstanding the foregoing, the City shall have no obligation to unconditionally  
21 approve the 100% Design Development Documents until Peregrine has delivered to the City a  
22 letter from MLS stating that MLS has approved the 100% Design Development Documents and  
23 that, provided the Project Improvements are constructed in accordance with the 100% Schematic

1 Drawings, the 50% Design Development Documents and the 100% Design Development  
2 Documents, the Stadium is approved as the home stadium of the Team.

3 **11.5 50% Construction Documents**

4 **11.5.1** Peregrine, using the Retained Parties, will prepare a complete set of 50%  
5 Construction Documents for the Project Improvements and submit those to the City by April 9,  
6 2010.

7 **11.5.2** The 50% Construction Documents must be consistent with the 100%  
8 Design Development Documents agreed upon by the City and Peregrine. Peregrine shall deliver  
9 one (1) full-sized set and three (3) half-sized sets of the 50% Construction Documents.

10 **11.5.3** The City shall have fifteen (15) Business Days to review, approve,  
11 Conditionally Approve, or disapprove some or all of the 50% Construction Documents. During  
12 the City's review process, Peregrine and its Retained Parties shall be readily available to the City  
13 to respond to the City's questions and comments with respect to the 50% Construction  
14 Documents. The City's decisions with respect to the 50% Construction Documents are not  
15 subject to Dispute Resolution or any judicial review. The City shall approve or disapprove some  
16 or all of the 50% Construction Documents and that decision shall be in writing.

17 **11.5.4** If the City fails to Conditionally Approve or disapprove 50% Construction  
18 Documents submitted to it within the foregoing fifteen (15) Business Day period, the 50%  
19 Construction Documents, as submitted, shall be deemed disapproved; provided, however, that  
20 Peregrine shall have the right, after the fifteen (15) Business Day period, to demand in writing  
21 that the City Conditionally Approve or disapprove the 50% Construction Documents within three  
22 (3) Business Days after receipt of the demand. Any such written demand by Peregrine shall not  
23 be effective unless it is accompanied by a clear statement from Peregrine in capital letters that it

1 is given pursuant to this Section 11.5.4 and that failure of the City to respond within three (3)  
2 Business Days after receipt shall be deemed Conditional Approval of the 50% Construction  
3 Documents. If the City fails to respond to Peregrine's demand within three (3) Business Days by  
4 Conditionally Approving or disapproving the 50% Construction Documents, the 50%  
5 Construction Documents, as submitted, shall be deemed Conditionally Approved.

## 6 **11.6 75% Construction Documents**

7 **11.6.1** Peregrine, using the Retained Parties, will prepare a complete set of 75%  
8 Construction Documents for the Project Improvements and submit those to the City on or before  
9 May 14, 2010, subject to Excused Delays.

10 **11.6.2** The 75% Construction Documents must be consistent with the 50%  
11 Construction Documents agreed upon by the City and Peregrine. Peregrine shall deliver one (1)  
12 full-sized set and three (3) half-sized sets of the 50% Construction Documents.

13 **11.6.3** The City shall have ten (10) Business Days to review, approve,  
14 Conditionally Approve, or disapprove some or all of the 75% Construction Documents. During  
15 the City's review process, Peregrine and its Retained Parties shall be readily available to the  
16 City to respond to the City's questions and comments with respect to the 75% Construction  
17 Documents. The City's decisions with respect to the 75% Construction Documents are not  
18 subject to Dispute Resolution or any judicial review. The City shall approve or disapprove  
19 some or all of the 75% Construction Documents and that decision shall be in writing.

20 **11.6.4** If the City fails to Conditionally Approve or disapprove 75% Construction  
21 Documents submitted to it within the foregoing ten (10) Business Day period, the 75%  
22 Construction Documents, as submitted, shall be deemed disapproved; provided, however, that  
23 Peregrine shall have the right, after the ten (10) Business Day period, to demand in writing that

1 the City Conditionally Approve or disapprove the 75% Construction Documents within three (3)  
2 Business Days after receipt of the demand. Any such written demand by Peregrine shall not be  
3 effective unless it is accompanied by a clear statement from Peregrine in capital letters that it is  
4 given pursuant to this Section 11.6.4 and that failure of the City to respond within three (3)  
5 Business Days after receipt shall be deemed Conditional Approval of the 75% Construction  
6 Documents. If the City fails to respond to Peregrine's demand within three (3) Business Days by  
7 Conditionally Approving or disapproving the 75% Construction Documents, the 75%  
8 Construction Documents, as submitted, shall be deemed Conditionally Approved.

### 9 **11.7 Contractor's Phase One and Final GMP**

10 **11.7.1** Peregrine has submitted the 100% Construction Documents for the Phase  
11 One Work to the Contractor and has submitted the Contractor's proposed guaranteed maximum  
12 price for the Phase One Project Improvements based on the 100% Construction Documents for  
13 the Phase One Work (the "Contractor's Phase One GMP"). The Contractor's Phase One GMP is  
14 a fixed dollar amount and includes all soft and hard costs to be incurred by the Contractor in  
15 connection with the Phase One Project Improvements, including, without limitation, construction  
16 management and supervision, actual construction, bonds and insurance, inspection, contractor's  
17 fee, allowances and contingencies. The Contractor's Phase One GMP has been prepared in a line  
18 item format.

19 **11.7.2** After securing the Contractor's Phase One GMP, Peregrine submitted to  
20 the City a copy of the Contractor's Phase One GMP. The City conditionally approved the  
21 Contractor's Phase 1A GMP on January 15, 2010. The City shall have conditionally approved or  
22 disapproved the Phase 1B GMP prior to Closing. At least ten (10) Business Days prior to  
23 Closing, Peregrine shall submit to the City the proposed Closing Project Budget, and the City

1 shall approve or disapprove the Closing Project Budget prior to Closing. During this ten (10)-  
2 day period, if requested by the City, Peregrine and the Contractor shall meet with the City for the  
3 purpose of reviewing the proposed Closing Project Budget and for the City to provide any of the  
4 City's objections to the proposed Closing Project Budget. The City shall not unreasonably  
5 disapprove the proposed Closing Project Budget if the Closing Project Budget does not exceed  
6 the Initial Project Budget and is consistent with the conditionally approved or approved 100%  
7 Design Development Documents. If the Closing Project Budget exceeds the Initial Project  
8 Budget, Peregrine and the City shall consult with each other for the purpose of attempting to  
9 reduce the Closing Project Budget to the Initial Project Budget; provided the City shall have no  
10 obligation to agree to changes in Base Scope to reduce the Closing Project Budget. Each of the  
11 City and Peregrine shall be entitled, in its sole discretion, to determine whether the Closing  
12 Project Budget can be so reduced and whether to accept any such reduction. If the Closing  
13 Project Budget cannot be so reduced, or if the City does not accept a reduction to the Closing  
14 Project Budget, which is also acceptable to Peregrine, then Peregrine shall proceed and shall bear  
15 all costs in excess of the Initial Project Budget, which will be deemed Cost Overruns.

16 **11.7.3** When the 75% Construction Documents are complete for the Project  
17 Improvements and approved by the City and Peregrine, Peregrine shall ask the Contractor to  
18 propose its final guaranteed maximum price for all of the Project Improvements by July 9, 2010,  
19 subject to Excused Delays, which shall be subject to approval by the City and Peregrine (the  
20 "Contractor's Final GMP"). Simultaneously with its submittal of the Contractor's Final GMP,  
21 Peregrine shall submit to the City the Final Project Budget, and the City shall approve or  
22 disapprove the Final Project Budget (including the Contractor's Final GMP) within ten (10)  
23 Business Days of its receipt of the same. During this ten (10)-day period, if requested by the

1 City, the City, Peregrine and the Contractor shall meet for the purpose of reviewing the proposed  
2 Final Project Budget and for the City to provide any of the City's objections to the proposed  
3 Final Project Budget. The City shall not unreasonably disapprove the proposed Final Project  
4 Budget if the Final Project Budget does not exceed the Closing Project Budget and is consistent  
5 with the approved Design Documents and Construction Documents. If the Final Project Budget  
6 exceeds the Closing Project Budget, Peregrine and the City shall consult with each other for the  
7 purpose of attempting to reduce the Final Project Budget to the Closing Project Budget; provided  
8 the City shall have no obligation to agree to changes in Base Scope to reduce the Final Project  
9 Budget. Each of the City and Peregrine shall be entitled, in its sole discretion, to determine  
10 whether the Final Project Budget can be so reduced and whether to accept any such reduction. If  
11 the Final Project Budget cannot be so reduced, or if the City does not accept a reduction to the  
12 Final Project Budget, which is also acceptable to Peregrine, then Peregrine shall proceed and  
13 shall bear all costs in excess of the Closing Project Budget, which will be deemed Cost Overruns.

14 **11.7.4** Upon the City's approval of the 75% Construction Documents, the  
15 Contractor's Final GMP and the Final Project Budget, Peregrine shall give the Contractor notice  
16 to proceed to construct the Phase Two Work.

17 **11.8 100% Construction Documents**

18 **11.8.1** Peregrine, using the Retained Parties, shall prepare a complete set of 100%  
19 Construction Documents in the manner set forth in this Section 11.8.1. The 100% Construction  
20 Documents will be subject to City approval.

21 **11.8.2** As soon as the 100% Construction Documents are completed, and after  
22 consultation with the City's Consulting Architect, Peregrine shall deliver one (1) full-sized set  
23 and three (3) half-sized sets of the 100% Construction Documents to the City with a written



1 notice requesting approval of the 100% Construction Documents. As requested by the City,  
2 Peregrine and the relevant Retained Parties shall make themselves available to meet with the City  
3 and to discuss the 100% Construction Documents.

4 **11.8.3** The City shall have twenty (20) days after receipt of 100% Construction  
5 Documents and a written request from Peregrine for approval to: (a) approve the 100%  
6 Construction Documents in whole or in part; (b) Conditionally Approve the 100% Construction  
7 Documents in whole or in part; or (c) disapprove of the 100% Construction Documents in whole  
8 or in part. The action of the City shall be in writing and shall be sent to Peregrine. If the City  
9 Conditionally Approves some or all of 100% Construction Documents, the City shall set forth  
10 the conditions of its approval, and if the City disapproves some or all of 100% Construction  
11 Documents, the City shall set forth the reasons for its disapproval. The standards for the City's  
12 action on the 100% Construction Documents are whether: (w) 100% Construction Documents  
13 are consistent with the 75% Construction Documents approved by the City; (x) whether the  
14 100% Construction Documents constitutes a Scope Change that would entitle the Contractor to a  
15 Change Order; (y) whether the 100% Construction Documents are consistent with the Design  
16 Review Process decision; and/or (z) whether the City's Conditional Approval or disapproval is  
17 otherwise reasonable based upon the operational characteristics or aesthetics of the proposed  
18 design of the Project Improvements as set forth in the 100% Construction Documents.

19 **11.8.4** With respect to 50%, 75% and 100% Construction Documents,  
20 "Conditional Approval" shall mean approval subject to: (a) the 50%, 75% and 100%  
21 Construction Documents, as applicable, not causing a Scope Change or, if the applicable  
22 Construction Documents do cause a Scope Change, the City's right to approve the 50%, 75% or  
23 100% Construction Documents after any modifications thereto to eliminate the Scope Change or

1 the City's right to approve the Change Order resulting from the Scope Change; and (b) the 50%,  
2 75% or 100% Construction Documents, as applicable, not increasing the Project Budget.

3 **11.8.5** If the City fails to Conditionally Approve or disapprove 100%  
4 Construction Documents submitted to it within the foregoing twenty (20)-day period, the 100%  
5 Construction Documents, as submitted, shall be deemed disapproved; provided, however, that  
6 Peregrine shall have the right, after the twenty (20)-day period, to demand in writing that the City  
7 Conditionally Approve or disapprove the 100% Construction Documents within three (3)  
8 Business Days after receipt of the demand. Any such written demand by Peregrine shall not be  
9 effective unless it is accompanied by a clear statement from Peregrine in capital letters that it is  
10 given pursuant to his Section 11.8.5 and that failure of the City to respond within three (3)  
11 Business Days after receipt shall be deemed Conditional Approval of the 100% Construction  
12 Documents. If the City fails to respond to Peregrine's demand within three (3) Business Days by  
13 Conditionally Approving or disapproving the 100% Construction Documents, the 100%  
14 Construction Documents, as submitted, shall be deemed Conditionally Approved. If the City  
15 fails to respond to Peregrine's demand within three (3) Business Days by Conditionally  
16 Approving or disapproving the 100% Construction Documents, the 100% Construction  
17 Documents, as submitted, shall be deemed Conditionally Approved.

18 **11.8.6** Peregrine has submitted 100% Construction Documents for the Phase One  
19 Work to the City Bureaus for regulatory permits. At the same time it submits to the City 100%  
20 Construction Documents for the remainder of the Project Improvements for the City's Approval,  
21 Peregrine shall also submit 100% Construction Documents to the City Bureaus for regulatory  
22 permits and to the Contractor. Peregrine shall require the Contractor, within ten (10) Business  
23 Days following the Contractor's receipt of the 100% Construction Documents, to notify

1 Peregrine and the City on a preliminary basis whether the 100% Construction Documents creates  
2 a Scope Change and a description of the Scope Change. Within thirty (30) days after receipt by  
3 the Contractor of the 100% Construction Documents, Peregrine shall cause the Contractor, on a  
4 final basis, to notify Peregrine and the City whether the 100% Construction Documents creates a  
5 Scope Change. If the Contractor fails within such thirty (30) days to notify Peregrine and the  
6 City whether the 100% Construction Documents will create a Scope Change, the Contractor shall  
7 not be entitled to recover as a City Cost, Project Cost or Peregrine Cost any increase in cost over  
8 the Contractor's GMP on the claim that such 100% Construction Documents create a Scope  
9 Change.

10 **11.8.7** If the Contractor submits a Scope Change notice, together with a  
11 description thereof and the amount of any increase to the Contractor's GMP caused by the Scope  
12 Change, Peregrine and the City shall promptly confer to assess the Scope Change notice. If  
13 Peregrine and the City agree that the 100% Construction Documents create a Scope Change, the  
14 Parties shall proceed in accordance with Section 11.8.10 and 11.8.11. If both Peregrine and the  
15 City agree that the work to be performed under the 100% Construction Documents for which the  
16 Contractor has submitted a Scope Change should be performed in any event, then the 100%  
17 Construction Documents at issue shall be deemed acceptable for submission (even though  
18 previously submitted) to obtain building permits, and the sole issue for the resolution in the  
19 underlying dispute resolution proceeding shall be whether the Contractor is entitled to an  
20 increase in the Contractor's GMP because of the claimed Scope Change.

21 **11.8.8** If, after consultations with the City, Peregrine does not agree with the  
22 Contractor's determination that the 100% Construction Documents create a Scope Change, but  
23 the City does agree, Peregrine shall initiate appropriate dispute resolution under the underlying

1 contract with the Contractor before proceeding with the submission of the 100% Construction  
2 Documents for applicable building permits. If Peregrine agrees with the Contractor's  
3 determination, but the City does not agree, the City may elect to direct that Peregrine initiate  
4 dispute resolution regarding the Contractor's determination pursuant to the underlying  
5 construction contract and include the City in such process if the City elects to participate, and  
6 Peregrine shall promptly and diligently prosecute such dispute resolution but shall not proceed  
7 with the submission of the 100% Construction Documents for applicable building permits.

8 **11.8.9** After expiration of the thirty (30)-day period within which the Contractor  
9 may submit a notice of Scope Change, if no notice of Scope Change is filed, the 100%  
10 Construction Documents shall be deemed approved if previously Conditionally Approved by the  
11 City.

12 **11.8.10** If Peregrine and the City agree that the 100% Construction Documents  
13 contain a Scope Change, and the Scope Change causes the Final Project Budget to be exceeded,  
14 Peregrine and the City shall jointly decide, each in their sole discretion, to: (a) attempt to modify  
15 the 100% Construction Documents through customary value engineering techniques and not  
16 through a Scope Change so as to stay within the Project Budget; (b) agree to use part of the  
17 Project Contingency to pay the increased cost related to the Scope Change; or (c) reduce the Base  
18 Scope so as to stay within the Closing Budget. Decisions by the Parties pursuant to this Section  
19 11.8.10 are not subject to Dispute Resolution.

20 **11.8.11** To the extent the Parties are unable to agree upon value-engineered cost  
21 reductions pursuant to Section 11.8.10 which would cause the Contractor to revoke its notice of  
22 Scope Change, then (except to the extent it is later determined that the Contractor's notice of  
23 Scope Change was incorrect) the City or Peregrine may disapprove the 100% Construction

1 Documents or the Contractor's GMP may be increased to the extent indicated in the Scope  
2 Change notice, less any cost savings that the Contractor agrees results from any value-engineered  
3 modifications to the 100% Construction Documents. If the Contractor's GMP is increased, it  
4 shall be a Project Cost unless such Scope Change would otherwise result in a City Cost or a  
5 Peregrine Cost.

6 **11.8.12** The Parties acknowledge and agree that neither (a) the City's approval of  
7 Drawings submitted by Peregrine which creates a Scope Change or (b) changes to the 100%  
8 Construction Documents requested by the City pursuant to this Section 11.8 shall be construed as  
9 resulting in City Costs. If Project Costs increase as a result of (a) or (b), the Project Contingency  
10 shall be used to pay the increase in Project Costs.

11 **11.8.13** Disputes regarding the reasonableness of any City disapproval of all or  
12 portions of the Drawings for any portion of the Project Improvements, or over the responsibility  
13 for cost allocation respecting any increase in the Contractor's GMP, shall be resolved in  
14 accordance with Dispute Resolution provided in this Agreement. Dispute Resolution regarding  
15 the reasonableness of a disapproval shall not yield a result that would require the City to agree to  
16 100% Construction Documents for the Project Improvements which would (a) cause the  
17 Contractor's GMP for the Project Improvements to increase in a manner which would result in  
18 the Project Budget being exceeded (unless Peregrine pays the increase as a Peregrine Cost) or  
19 (b) reduce the overall quantity or overall quality of the Project Improvements from the 100%  
20 Design Development Documents. The Dispute Resolver shall only review the criteria provided  
21 in this Section 11.8 in determining whether any City's disapproval under this Section 11.8 was  
22 reasonable. The review and approval of 100% Construction Documents pursuant to this Section  
23 11.8 shall be separate from and in addition to any regulatory review and approval process

1 provided for under the City Codes. City approval or deemed approval of 50%, 75% and 100%  
2 Construction Documents (or determinations under Dispute Resolution) shall not (x) constitute or  
3 be used, either directly or indirectly or in any manner or for any purpose, as an approval of or  
4 statement that the 50%, 75% or 100% Construction Documents, as applicable, are in  
5 conformance with applicable City Codes, or (y) operate or act as a waiver of any rights or  
6 remedies of the City as to any defect in the 50%, 75% or 100% Construction Documents, as  
7 applicable, or in the construction or installation of the element of Project Improvements to which  
8 they relate.

9 **11.8.14** In the event of any dispute regarding the approval of 100% Construction  
10 Documents, construction shall not commence based on the disputed portion of the 100%  
11 Construction Documents until the Dispute Resolution has been completed and the 100%  
12 Construction Documents, or disputed portion thereof, are either approved or deemed approved by  
13 the City. However, no Dispute Resolution regarding responsibility for cost increases arising out  
14 of 100% Construction Documents shall delay any use of 100% Construction Documents for  
15 construction purposes, so long as the costs do not cause the Project Budget to be exceeded. The  
16 Parties acknowledge and agree that only in the event of an occurrence under Section 11.9.1 will  
17 the City bear responsibility for cost increases arising out of 100% Construction Documents as a  
18 City Cost.

19 **11.8.15** From time to time, to the extent compatible with the Project Schedule,  
20 the City may include City Changes within the Project Improvements. The City shall give written  
21 notice to Peregrine of any requested City Changes, and Peregrine's consent to a City Change  
22 shall not be unreasonably withheld or delayed, but in any event Peregrine shall respond to the  
23 City's written request within ten (10) Business Days after receipt. Peregrine may withhold its

1 consent only if: (a) the City Change is incompatible as to design, quality or operating  
2 characteristics with MLS requirements; (b) the construction or operation of the City Change  
3 would increase the net costs of the construction or operation of the Project Improvements,  
4 including the costs relating to extending or altering the Project Schedule, unless the City agrees  
5 to pay for any such increased costs as a City Cost; or (c) the City Change would cause a material  
6 delay in the Project Schedule. Disputes regarding Peregrine disapproval under this Section  
7 11.8.15 shall be resolved pursuant to Dispute Resolution.

## 8 **11.9 Responsibility for Cost Increases**

9 **11.9.1** Cost Increases to the cost of Project Improvements (whether through  
10 increase in Contractor's GMP, increased design or engineering fees, or otherwise), that cause  
11 Project Costs to exceed the Final Project Budget and result from: (a) requested and approved City  
12 Changes; (b) changes to the Project Schedule which are required by the City or reasonably  
13 necessitated by City Changes; and (c) breach of this Agreement by the City, are City Costs.  
14 Lawful actions by the City in its regulatory capacity are not covered by this Section 11.9.1.

15 **11.9.2** Any Cost Increases other than those described in Section 11.9.1 (whether  
16 through increase in Contractor's GMP, increased design or engineering fees, or otherwise) that  
17 cause Project Costs to exceed the Final Project Budget (including the Project Contingency),  
18 whether or not arising from acts or omissions of Peregrine, and including without limitation Cost  
19 Increases associated with substitutions, additions, selection of alternates, and increases over  
20 allowances, schedule changes, and risks of Changed Conditions, Acts of God, Excused Delays  
21 (except for the City breach of this Agreement or a Related Agreement), and regulatory changes  
22 are Cost Overruns. Peregrine shall be responsible for and shall pay for all Cost Overruns.

1                   **11.9.3** Costs for Supplemental Environmental Assessment and/or Environmental  
2 Remediation shall be allocated as provided in Section 8.

3                   **11.9.4** Each Party shall bear its own costs of defense of any litigation filed by a  
4 third party to challenge the validity of this Agreement, the Related Agreements, or any approvals  
5 or actions of the City or other public body or officers in authorizing or implementing this  
6 Agreement and Related Agreements, and such costs shall not be Project Costs but shall be either  
7 City Costs or Peregrine Costs, as applicable.

#### 8                   **11.10 Application of Contingencies and Cost Savings**

9                   **11.10.1 GMP Contingency.** The GMP Contingency is a contingency that is part  
10 of the Contractor's Final GMP and accordingly, is part of the Final Project Budget. The use of  
11 the GMP Contingency shall be controlled by the General Construction Contract. Any cost  
12 savings shared with the "Owner" under the General Construction Contract shall become part of  
13 the Project Contingency.

14                   **11.10.2 Project Contingency.** The Project Contingency shall be used as follows:  
15 (a) to pay for Change Orders where the Contractor is entitled to a Change Order; (b) to pay for an  
16 increase in the Project Costs for costs not included in the Final Project Budget; and (c) except as  
17 set forth in Section 17.1.4, in the event that it has been reasonably determined by Peregrine and  
18 the City that the Project Improvements can be Substantially Completed for less than the Final  
19 Project Budget, then the Project Contingency shall be used pursuant to Section 17.4.3. To the  
20 extent that there are cost savings in Project Costs under any contract with a Retained Party for the  
21 Project Improvements that accrue to the benefit of Peregrine, such cost savings shall be applied  
22 to increase the Project Contingency. Prior to spending the Project Contingency or any portion  
23 thereof, Peregrine shall submit to the City a letter with the Project Manager's recommendations



1 for use of the Project Contingency. The City shall approve or disapprove such recommendations  
2 in accordance with the timing and process for approving or disapproving 50% Construction  
3 Documents as set forth in Section 11.5; provided, however, that the initial time period for the  
4 City's review shall be seven (7) Business Days instead of fifteen (15) Business Days.

5 **11.10.3 Temporary Over Payment.** If at any time during the Term of this  
6 Agreement, either the City or Peregrine has overpaid its then current obligation to make  
7 payments to the other, then upon a determination by either Party that an overpayment has  
8 occurred, the Party holding the overpayment will promptly return the overpayment to the other  
9 Party without interest. Any dispute under this Section 11.10.3 shall be subject to Dispute  
10 Resolution.

11 **11.10.4** No portion of the Peregrine Contribution, the Public Contribution, the  
12 Project Contingency or any cost savings shall be used to fund any portion or components of, or  
13 any cost associated with, the Clinic Facility.

## 14 **SECTION 12 CONSTRUCTION OF PROJECT IMPROVEMENTS**

### 15 **12.1 Contract With General Contractor, License**

16 **12.1.1** The City has approved the Contractor and has conditionally approved the  
17 General Construction Contract, and Peregrine has entered into that General Construction  
18 Contract with the Contractor for the construction of the Project Improvements.

19 **12.1.2** Peregrine agrees to enforce the General Construction Contract for the  
20 benefit of the City and to promptly notify the City of any material breach of the General  
21 Construction Contract by the Contractor or any circumstances which with only the passage of  
22 time would constitute a material breach of the General Construction Contract.

1           **12.1.3** Peregrine, at its cost and expense, shall obtain any and all contractor or  
2 developer licenses required by applicable Laws. Peregrine shall provide the City with copies of  
3 any and all such licenses obtained.

## 4           **12.2 Project Improvements**

5           **12.2.1** Peregrine shall construct or cause the construction of the Project  
6 Improvements, in a good and workmanlike manner, in accordance with the 100% Construction  
7 Documents and within the Project Schedule, subject only to Excused Delays or breaches by the  
8 City under this Agreement or any of the Related Agreements.

9           **12.2.2** Peregrine shall be responsible for securing all necessary approvals,  
10 consents and permits for the design and construction of the Project Improvements. In accordance  
11 with the Project Schedule, Peregrine shall obtain on behalf of the City all occupancy, use and  
12 operation permits from the City or any of its departments or agencies required to be obtained for  
13 the Project Improvements, and such other licenses, permits and similar authorizations from  
14 governmental authorities having jurisdiction over the Project Improvements as may be necessary.  
15 The City will cooperate with and assist Peregrine in obtaining, and shall join in any application  
16 for mutually agreed upon licenses, permits and similar authorizations for the Project  
17 Improvements, where the City must sign the application in order for the application to be  
18 complete.

19           **12.2.3** The work of building the Project Improvements includes incorporation of  
20 new structural elements and building systems into an existing structure. Peregrine shall be  
21 responsible for ensuring that the elements, structures and systems of the Project Improvements  
22 designed and constructed by the Retained Parties are consistent with and are properly integrated  
23 with all other elements, structures and systems of the Stadium, and to ensure that these facilities

1 when completed will function properly in an integrated manner with the existing Stadium and in  
2 accordance with Laws and the requirements of this Agreement.

3           **12.2.4** Peregrine shall, and shall make reasonable efforts to cause all Retained  
4 Parties to, take all safety measures reasonably appropriate and necessary to protect: (a) all  
5 persons at and about the Project Site from injury or damage caused by or resulting from the  
6 performance of construction; (b) the work and materials and equipment to be incorporated  
7 therein, whether in storage on or off the Project Site; and (c) other property at the Stadium or  
8 adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and  
9 utilities not designated for removal, relocation or replacement in the course of construction.

10 Peregrine shall, and shall cause all Retained Parties to, (x) give all notices and comply with  
11 applicable Laws bearing on safety of persons or property or their protection from damage, injury  
12 or loss and (y) erect and maintain reasonable safeguards for safety and protection, including  
13 installation of barriers and posting danger signs and other warnings against hazards,  
14 promulgating safety regulations and notifying users of the Stadium and adjacent sites and  
15 utilities. Peregrine shall cause the Contractor to prepare and submit to the City a written safety  
16 program for the Project prior to Contractor's entry onto the Project Site. When use or storage of  
17 explosives or other hazardous materials or equipment or unusual methods are necessary for  
18 execution of the work, Peregrine shall cause the Retained Parties to exercise utmost care and  
19 carry on such activities under supervision of properly qualified personnel. Peregrine shall, as a  
20 Peregrine Cost, promptly remedy any damage or loss (other than damage or loss insured under  
21 property insurance required under this Agreement) to property referred to in this Section 12.2.4  
22 caused in whole or in part by the negligence of Peregrine, of a Retained Party, or of anyone  
23 directly or indirectly employed by any of them, except to the extent of damage or loss attributable

1 to the negligence of the City. Peregrine shall designate and identify to the City a responsible  
2 person at the Project Site whose duty shall be the prevention and reporting of accidents, who  
3 shall be the project superintendent unless otherwise designated by Peregrine in writing to the City  
4 and Architect.

5 **12.2.5** No events have been or will be scheduled to occur at the Stadium during  
6 construction of the Project Improvements nor will construction of the Project Improvements  
7 occur during any scheduled events. Peregrine shall defend, indemnify and hold harmless the  
8 City, and the City Indemnitees from any and all Claims arising out of events held at the Stadium  
9 during construction.

### 10 **12.3 City's Right To Inspect and Receive Information**

11 Peregrine shall provide to the City timely information regarding the progress of  
12 the Project Improvements through every phase of design and construction.

13 **12.3.1** During the design and construction of the Project Improvements, including  
14 during the period prior to Closing, Peregrine shall submit to the City's Construction  
15 Representative not less frequently than monthly a report in such form and detail as may be  
16 reasonably acceptable to the City, as to the progress of design, financing, budgets, schedules, cost  
17 estimates and upcoming approvals, and the fulfillment of conditions related to the Project.

18 **12.3.2** The City's Construction Representative and Peregrine's Construction  
19 Representative, or their respective designees, shall meet with and consult with each other, not  
20 less than every two weeks, regarding the status of the Project Improvements. Such meetings  
21 shall generally be held at the Project Site unless the Construction Representatives or Alternates  
22 otherwise agree on a different location. Peregrine shall give the City's Construction  
23 Representative advance written or electronic notice of all scheduled meetings with the Architect

1 and Contractor, and the City's Construction Representative will be given the opportunity to  
2 attend any of such meetings. Peregrine will forward to the City's Construction Representative all  
3 minutes of such meetings and any other Project meetings.

4 **12.3.3** The City's Construction Representative, and its agents as designated in  
5 writing to Peregrine, shall have access to bidding materials and the Project Site and the right to  
6 inspect the Project Improvements at all reasonable times to determine the status of selection of  
7 subcontractors, construction, and compliance with the 100% Construction Documents, and as  
8 otherwise provided for in this Agreement. Peregrine shall cause the Retained Parties to make  
9 themselves available for access by the City's Construction Representative and its agents to  
10 answer questions and provide information; provided that, unless the Parties have agreed  
11 otherwise, such Retained Parties need not accept direction from the City's Construction  
12 Representative unless given through Peregrine's Construction Representative.

13 **12.3.4** Peregrine shall provide the City's Construction Representative access to  
14 copies of all daily, weekly and monthly reports or bulletins prepared by the Architect, the  
15 Contractor, or the Project Manager with respect to the Project Improvements or that relate to the  
16 Project Improvements. Peregrine shall cause to be maintained at the Project Site for review by  
17 the City's Construction Representative one record copy of all drawings, specifications, addenda,  
18 Change Orders and other construction documentation, in good order and marked currently to  
19 record field changes and selections made during construction, and one record copy of approved  
20 shop drawings, product data, samples and similar submittals. These shall be available to the  
21 City's Construction Representative to review at any reasonable time.

22 **12.3.5** If during its inspections of the Project Improvements, the City observes  
23 safety hazards, the City may inform Peregrine and the Contractor of those safety hazards, and

1 Peregrine will cause the Contractor to promptly remedy any actual safety hazards. The City has  
2 no responsibility to inspect the Project Improvements for safety hazards or to report any observed  
3 safety hazards to Peregrine or the Contractor. The City shall have no liability on account of: its  
4 observation or non-observation of safety hazards and its reporting or non-reporting of safety  
5 hazards to Peregrine or the Contractor.

6 **12.3.6** Nothing in this Section 12.3 shall limit the rights of the City under its  
7 regulatory powers as provided in the City Code.

#### 8 **12.4 Change Orders**

9 **12.4.1** The City shall have the right, in its sole discretion, to approve each Change  
10 Order to the Project Improvements, except as follows: (a) if the Change Order is substantially  
11 consistent with the approved 100% Construction Documents, does not result in a Scope Change  
12 and does not result in an increase to the Project Budget, then the City shall have no right to  
13 approve such Change Order; (b) if the Change Order is inconsistent with the approved 100%  
14 Construction Documents or results in an increase to the Project Budget, but does not result in a  
15 Scope Change, then the City will not unreasonably withhold such approval; and (c) if the  
16 Contractor is entitled to the Change Order under the terms of the General Construction Contract  
17 and the Change Order does not result in a City Cost, then City shall have no right to approve such  
18 Change Order.

19 **12.4.2** The City's Construction Representative and Peregrine's Construction  
20 Representative shall each have the authority to separately approve Change Orders on behalf of  
21 the City and Peregrine, respectively. Except as otherwise provided in this Section 12.4.2, the  
22 City's Construction Representative may not agree to a Change Order that increases the Public  
23 Contribution or agree to a City Cost. One of the City's Construction Representatives and one of

1 Peregrine's Construction Representatives shall be available upon not more than twenty-four (24)  
2 hours notice to come to the Project Site to discuss a proposed Change Order. The City's and  
3 Peregrine's Construction Representatives shall each carry a pager or cellular telephone during the  
4 normal construction day. All Change Orders shall be in writing and signed by Peregrine's  
5 Construction Representative, and Peregrine shall promptly submit the same to the City's  
6 Construction Representative. If the Change Order involves a City Cost or Project Cost with a net  
7 increase of equal to or less than \$25,000, the City's Construction Representative shall promptly  
8 approve or disapprove the Change Order, but in no event later than three (3) Business Days after  
9 receipt from Peregrine. If the Change Order involves a City Cost or Project Cost with a net  
10 increase of greater than \$25,000 but less than \$100,000, the City's Construction Representative  
11 shall promptly approve or disapprove the Change Order, but in no event later than five (5)  
12 Business Days after receipt from Peregrine. If the Change Order involves a City Cost or Project  
13 Cost with a net increase of greater than \$100,000, the City's Construction Representative shall  
14 promptly approve or disapprove the Change Order, but in no event later than seven (7) Business  
15 Days after receipt from Peregrine. If the City reasonably requires additional information or  
16 documents in order to approve a Change Order, the City's Construction Representative, within  
17 two (2) Business Days after receipt of the Change Order, shall notify Peregrine's Construction  
18 Representative of such additional information or documents. Notwithstanding the foregoing, if a  
19 Change Order will result in a City Cost, other than as a result of a City Change, the City will not  
20 be required to approve such Change Order until it has had sufficient time to obtain the City  
21 Council's approval of the expenditure. If the City and Peregrine both agree that work to be  
22 performed under the Change Order should be performed, but the City objects to the Change  
23 Order on the basis of the increased costs, then Peregrine may (a) agree that the increased cost is a

1 Cost Overrun or (b) issue a construction change directive and the reasonableness of the net  
2 increase in the cost for the Change Order shall be subject to the dispute resolution provisions of  
3 the General Construction Contract. In a transmittal memorandum forwarding the Change Order  
4 to the City, Peregrine shall state its belief as to the reason(s) or cause(s) requiring the Change  
5 Order and whether such increased costs are Project Costs, City Costs or Peregrine Costs. By  
6 approving Change Orders, neither the City nor Peregrine shall be precluded from claiming that  
7 any increase in costs was as a result of the other Party's negligence or from claiming that the  
8 increased costs are Peregrine Costs, City Costs or Project Costs, as the case may be.

9 **12.5 Bonding Requirements for Project Improvements**

10 **12.5.1** All design and construction contracts for Project Improvements shall  
11 contain bonding and insurance provisions reasonably acceptable to Peregrine and the City. At or  
12 prior to Closing, Peregrine shall provide to the City a performance and payment bond, in the  
13 amount of the Contractor's Phase One GMP, on AIA Form A312, securing performance of the  
14 Phase One Project Improvements from a surety acceptable to the City and naming the City as  
15 owner. At or prior to the City's approval of the Contractor's Final GMP, Peregrine shall provide  
16 to the City a performance and payment bond, in the amount of the Contractor's Final GMP, on  
17 AIA Form A312, securing performance of the Contractor's General Construction Contract from a  
18 surety acceptable to the City and naming the City as owner. The cost of such bonds shall be a  
19 Project Cost.

20 **12.6 As Built Survey**

21 Within one hundred twenty (120) days after Substantial Completion of the Project  
22 Improvements, Peregrine shall provide the City with two (2) hard copies of and a compact disc  
23 containing an "as built" survey for those Project Improvements, if any, that alter the footprint of



1 the Stadium as compared to the footprint of the Stadium as of the Effective Date. The cost of the  
2 "as built" survey for the Project Improvements shall be a Project Cost.

### 3 12.7 Liens

4 In the event any contractor's lien, Little Miller Act claim, or other statutory lien  
5 shall be filed during the term of this Agreement against any portion of the Stadium or the Project  
6 Site or any portion of the Project Improvements being constructed at the Stadium or on the  
7 Project Site, or against any payment or performance bonds with respect to the Project  
8 Improvements, by reason of labor, services or materials supplied to, or at the request of,  
9 Peregrine or pursuant to any construction on the Project Site, Peregrine shall pay and discharge  
10 such lien or claim within thirty (30) days after the filing thereof, subject to the provisions of the  
11 following sentence. Peregrine shall have the right to contest the validity, amount or applicability  
12 of any such lien or claim by appropriate legal proceedings, and so long as Peregrine furnishes a  
13 bond or indemnity as provided below, and is prosecuting such contest in good faith, the  
14 requirement that it pay and discharge such items within said thirty (30) day period shall not be  
15 applicable. In any event, Peregrine shall within thirty (30) days after the filing either post a bond  
16 in accordance with applicable laws, or in the alternative indemnify, or cause a Retained Party to  
17 indemnify against such liens or claims in amount and form satisfactory to induce a title insurance  
18 company to insure over such liens without showing any title exception by reason of such liens.  
19 Peregrine shall defend, indemnify, and hold the City harmless from all loss, damage, liability,  
20 expense or claim whatsoever (including attorneys' fees and other costs of defending against the  
21 foregoing) resulting from the assertion of any such liens or claims provided that this provision  
22 shall not change the obligation of the Party otherwise to pay the cost of the work giving rise to  
23 the lien as provided by other provisions of this Agreement. In the event such legal proceedings

1 shall be finally concluded (so that no further appeal may be taken) adversely to Peregrine,  
2 Peregrine shall within ten (10) days thereafter cause the liens or claims to be discharged of  
3 record. Whether any cost or expense contemplated by this Section 12.7 is a Peregrine Cost, City  
4 Cost, or Project Cost shall be determined by reference to other relevant provisions of this  
5 Agreement.

## 6 12.8 Non-regulatory Punchlist Procedure

7 12.8.1 When the Contractor considers the Project Improvements, or a portion  
8 thereof which Peregrine and the City agree to accept separately, are substantially complete, the  
9 Contractor shall submit a request to the Architect for an inspection to determine Substantial  
10 Completion and Peregrine shall notify the City in writing at least five (5) Business Days in  
11 advance of such inspection so that the City may attend as well. In advance of the inspection, the  
12 Contractor shall prepare and submit to the Architect and Peregrine a comprehensive list of items  
13 that the Contractor believes remain to be completed or corrected prior to final payment (the  
14 "Preliminary Punch List"), which Peregrine shall transmit to the City. Upon receipt of the  
15 Preliminary Punch List, the Architect, in conjunction with Peregrine, the Contractor and the City  
16 (if the City so elects), shall inspect the Project Improvements or portion thereof to establish  
17 whether Substantial Completion has been achieved and to provide input on the Preliminary  
18 Punch List. Following this inspection, the Architect shall review and edit or supplement, as  
19 necessary, the Preliminary Punch List so that it properly reflects all items of Project  
20 Improvements which the Architect, Peregrine and the City believe are not in accordance with the  
21 requirements of the General Construction Contract. The revised Preliminary Punch List shall be  
22 submitted to Peregrine and the City for approval. Approval or disapproval shall be given by the  
23 City and Peregrine within five (5) Business Days after receipt. The Preliminary Punch List

1 approved by Peregrine and the City shall be the "Punch List". Peregrine shall transmit the Punch  
2 List to the Contractor and the City. Before issuance of the Certificate of Substantial Completion,  
3 Peregrine shall cause the Contractor to complete or correct such items on the Punch List that are  
4 necessary to achieve Substantial Completion. When the Contractor considers the items on the  
5 Punch List to be substantially complete, the Contractor shall then submit to Peregrine a request  
6 for another inspection by the Architect. Peregrine will notify the City of all such additional  
7 inspections in the same manner as the notice for the initial inspection, and the City may elect to  
8 participate in any such inspections. If an item on the Punch List is not approved by the City and  
9 the Architect as being satisfactorily completed, Peregrine shall complete or cause the Contractor  
10 to complete the item until it is satisfactorily completed. All such items shall be subject to re-  
11 inspection in accordance with this Section 12.8.1. Any Dispute between Peregrine and the City  
12 with respect to satisfactory completion of items on the Punch List shall be subject to and resolved  
13 by Dispute Resolution. When the Architect, the City and Peregrine agree that the Project  
14 Improvements or portion thereof are substantially complete, the Architect will prepare a  
15 "Certificate of Substantial Completion" which shall establish the date of Substantial Completion  
16 and shall fix the time within which the Contractor shall finish all items on the Punch List. Each  
17 of the Architect, the City, the Contractor and Peregrine shall sign the Certificate of Substantial  
18 Completion to evidence their respective agreement that the Project Improvements or portion  
19 thereof are Substantially Complete.

20 **12.8.2** The Certificate of Substantial Completion shall in no way limit or affect  
21 continuing obligations set forth in this Agreement and Related Agreements. In addition, the  
22 City's participation in Substantial Completion inspections shall not relieve Peregrine from  
23 complying with any of the regulatory requirements regarding the construction of improvements

1 under City Codes and other applicable Laws. Certificates of Substantial Completion will be in  
2 such form as will enable them to be recorded with the County Clerk of Multnomah County,  
3 Oregon.

4           **12.8.3** Upon final completion of all of the Project Improvements, the Contractor  
5 shall forward to Peregrine a written notice that the Project Improvements are ready for final  
6 inspection and acceptance, along with a final Application for Payment. Upon receipt, Peregrine  
7 will forward the notice and Application for Payment to the Architect, who will promptly make  
8 such inspection. Peregrine shall notify the City in writing at least five (5) Business Days in  
9 advance of such inspection so that the City may attend as well. When the Architect, the City and  
10 Peregrine agree that the Project Improvements are complete in accordance with the General  
11 Construction Contract and the Drawings and Specifications, Peregrine and the Architect will  
12 promptly issue a final Certificate for Payment. The final Certificate for Payment shall not be  
13 issued until the Contractor submits the documents required to be submitted for final payment as  
14 described in Section 18.2.2. If the City reasonably agrees that the Project Improvements are  
15 Finally Complete, the City shall issue an appropriate instrument (the "Certificate of Final  
16 Completion") so certifying. The Certificate of Final Completion shall be issued by the City  
17 when: (a) the City has received all documents required to be submitted for final payment as  
18 described in Exhibit 18.2.2; (b) the City has received the City's Acknowledgement Form (the  
19 form of which is attached as Exhibit 12.8.3), signed by the Contractor; and (c) Peregrine has  
20 removed all rubbish, tools, scaffolding and surplus materials and equipment from the Project  
21 Site. Final payment shall not be made to the Contractor until the City has issued the Certificate  
22 of Final Completion. The Certificate of Final Completion by the City shall be a conclusive non-  
23 regulatory determination by the City that the Project Improvements are Finally Completed but

1 shall not otherwise limit or affect any continuing obligation of Peregrine under the Related  
2 Agreements or otherwise under this Agreement.

3           **12.8.4** If Peregrine believes that a Certificate of Substantial Completion should be  
4 issued and the City reasonably disagrees, the City shall furnish its objections in writing to  
5 Peregrine within five (5) Business Days after written request by Peregrine for approval of the  
6 issuance of a Certificate of Substantial Completion, or it shall waive all objections to the  
7 Certificate of Substantial Completion and shall be deemed to have signed it. Upon receipt of the  
8 City's objections, Peregrine shall cause the Contractor to complete the Project Improvement in a  
9 manner responsive to the objections. Similarly, if Peregrine believes that a final Certificate for  
10 Payment should be issued and the City reasonably disagrees, the City shall furnish its objections  
11 in writing to Peregrine within five (5) Business Days after written request from Peregrine for  
12 approval of the issuance of a final Certificate for Payment, or it shall waive all objections to the  
13 final Certificate for Payment and shall be deemed to have agreed that final payment to the  
14 Contractor is appropriate. Any Dispute with respect to the Certificate of Substantial Completion  
15 or the final Certificate for Payment shall be subject to Dispute Resolution if the Dispute  
16 Resolution provisions are still in effect or judicial resolution if the Dispute Resolution provisions  
17 are no longer in effect.

18           **12.9 Correction of Material Defects**

19           **12.9.1** During the course of construction of the Project Improvements, the City  
20 and Peregrine shall promptly notify each other of any Material Defects of which a Party becomes  
21 aware in: (a) the 100% Construction Documents; (b) in the work of any of the Retained Parties;  
22 or (c) in the Project Improvements. Promptly after notice by the City or actual knowledge by  
23 Peregrine of a Material Defect, Peregrine shall promptly commence and thereafter diligently

1 proceed to correct any such Material Defect. If the City notifies Peregrine of a Material Defect  
2 within five (5) years after Substantial Completion, Peregrine shall promptly commence and  
3 thereafter diligently proceed with the Correction of any such Material Defect or any Material  
4 Defect known by Peregrine. Peregrine shall undertake the Correction in a manner to minimize  
5 interference to the extent reasonably practical, with the operations of the Project Improvements.  
6 Except as provided in Section 11.9.1, all costs of such Correction which are not recovered from  
7 the Contractor, Architect, Retained Parties or third parties, are Peregrine Costs to the extent the  
8 cost of Correction causes the Final Project Budget to be exceeded.

9 **12.9.2** If the Correction would not be practicable or economically feasible under  
10 the circumstances and provided that the function, utility, useful life, structural components and  
11 aesthetic qualities of the Project Improvements are not compromised, the Correction need not be  
12 made, subject to the City's reasonable approval, so long as any partial Corrections acceptable to  
13 the City that can be reasonably made are made to the Project Improvements.

14 **12.9.3** The obligation of Peregrine to correct Material Defects shall be  
15 independent of the process for identifying and completing the Punch List items pursuant to  
16 Section 12.8 (although the identification or Correction of a Material Defect may occur during the  
17 Punch List process set forth in Section 12.8) and shall be independent of any obligation owed to  
18 a Party under any warranty or guaranty from an architect or a third-party contractor or supplier.

19 **12.9.4** Promptly after becoming aware of a claim against any Retained Party  
20 related to the Project Improvements, Peregrine shall put the Retained Party on written notice of  
21 such claim and shall provide a copy of such notice to the City. The City shall have the right, but  
22 not the obligation, to advise Peregrine in writing of any matters of which the City becomes aware  
23 that may constitute a claim against a Retained Party. Peregrine shall vigorously prosecute all

1 good faith claims against Retained Parties promptly after becoming aware of a claim against any  
2 Retained Party. Except as otherwise provided in Section 11.9.1, the cost of such prosecution is a  
3 Cost Overrun to the extent the cost causes the Final Project Budget to be exceeded. At the  
4 request of the City, Peregrine shall assign such a claim to the City, in which case the cost is not a  
5 Cost Overrun.

6 **12.9.5** Peregrine shall assign and deliver to the City all Warranties from third-  
7 party contractors and suppliers with respect to the Project Improvements. Peregrine shall  
8 organize the Warranties by logical components of the Project Improvements; shall index the  
9 Warranties to show the components to which such Warranty applies; shall show the expiration  
10 date for each such Warranty; and shall promptly deliver the same to the City after Substantial  
11 Completion of each component of the Project Improvements. Notwithstanding the foregoing,  
12 Peregrine shall retain the right to enforce all Warranties as necessary to perform its obligations  
13 under this Section 12.9, and the City shall cooperate in such enforcement, so long as the same is  
14 at no additional expense to the City.

15 **12.9.6** Peregrine shall give the City thirty (30) days prior notice of any training  
16 dates established in connection with the Warranties. The City shall cause its required employees  
17 and Peregrine shall cause its Stadium manager to attend such training. Peregrine shall provide to  
18 the City along with the Warranties in Section 12.9.5, a certificate signed by the Architect or  
19 Peregrine's Representative that all the required training associated with such Warranties has been  
20 completed. Each Party shall bear responsibility for the effect on the Warranties, if any, of failure  
21 of any of such Party's employees to attend such training meetings after due notice of the same.

1           **12.10 Sports Clinic Facility**

2                   **12.10.1** Peregrine may enter into one or more agreements (collectively, the  
3           “Sponsorship Agreement”) with a Stadium sponsor/lessee (each, a “Sponsor”) to design and  
4           construct certain improvements comprising office and conference space in the Stadium for use as  
5           a sports clinic and related uses (the “Clinic Facility”). The City (including the City Council)  
6           shall have the right to review and approve any and all portions of the Sponsorship Agreement  
7           which relate to the Sponsor’s use and occupancy of the Clinic Facility. The Sponsorship  
8           Agreement will be prepared and executed prior to Closing. The Sponsorship Agreement will  
9           convey no rights to the use and occupancy of the Stadium or the Clinic Facility to the Sponsor  
10          beyond the rights held by Peregrine and Shortstop LLC unless the City has agreed in writing to  
11          the terms and conditions of a direct agreement with the Sponsor that will govern such Sponsor’s  
12          occupancy and use rights following the expiration or termination of the Operating Agreement.

13                   **12.10.2** If built, the Clinic Facility will be built contemporaneously with the  
14          Project Improvements, but is not part of the Project Improvements. The Clinic Facility will be  
15          included in all Design Documents and Construction Documents submitted to the City. Costs of  
16          construction of the Clinic Facility are not and will not be included in any Project Budget, and the  
17          cost of all components of the Project Improvements that would not be necessary to design or  
18          construct if the Clinic Facility was not being built, shall not be Project Costs but shall be  
19          allocated to the Clinic Facility and borne by Peregrine.

20                   **12.10.3** As evidence of the foregoing, Peregrine will execute an Add Service No.  
21          2 under the Architectural Services Agreement to require design of the Clinic Facility (the  
22          “Additional Services”) and will propose a Change Order to the General Construction Contract  
23          detailing the Clinic Facility construction work and costs.



1           **12.10.4** The costs for the Additional Services and the Change Order are  
2 specifically not Project Costs. Peregrine will make the Add Service No. 2 and the Change Order  
3 available for City review to confirm that all costs in the Change Order and the Add Service No. 2  
4 are the total costs of the Clinic Facility, and that, to the extent possible, no part of the Clinic  
5 Facility is included in the Project Improvements, and no costs of the Clinic Facility are included  
6 in the Project Budget. In addition, on or before the Closing, Peregrine and the City shall have  
7 agreed on the allocation of costs between the Project Improvements and the Clinic Facility or, to  
8 the extent costs have not yet been determined, on the methodology for allocating all such costs.

9           **12.10.5** At each Draw Request, Peregrine will also allow the City's Construction  
10 Representative to review a draw request for the Clinic Facility, if any, although the City shall  
11 have no right to approve a Clinic Facility draw request. If at any time, the City's Construction  
12 Representative believes that the costs of the Clinic Facility are included in a Draw Request, the  
13 City may disapprove the Draw Request.

## 14 **SECTION 13 PROJECT SCHEDULE, TIME OF COMPLETION**

### 15 **13.1 Project Schedule**

16           The projected construction schedule for the Project, including agreed completion  
17 dates for each component of the Project Improvements, is attached as Exhibit 13.1 (the "Project  
18 Schedule"). Peregrine shall commence, or shall have commenced, construction of the Project  
19 Improvements according to the Project Schedule, and shall achieve Substantial Completion of  
20 the Project Improvements by April 8, 2011 (the "Substantial Completion Date"), subject to  
21 Excused Delays.

1           **13.2 Changes In Project Schedule**

2           Any change to the Project Schedule shall require the City's prior written consent,  
3 except for:

4           **13.2.1** A change caused by a delay in the Closing and, in that event, the Project  
5 Schedule shall be extended by the period of the delay;

6           **13.2.2** Changes in the Project Schedule to which the Contractor is entitled under  
7 the General Construction Contract;

8           **13.2.3** Changes based on approved Change Orders; or

9           **13.2.4** Changes due to the City's breach of this Agreement.

10           **13.3 Avoidance of Delays**

11           Peregrine shall promptly advise the City of any facts or circumstances that may  
12 give rise to a delay in the Substantial Completion of the Project Improvements compared to the  
13 then approved Project Schedule. In the event of such anticipated delay, the City, Peregrine, and  
14 the Contractor shall meet to explore ways to change the sequencing of the work, or other actions  
15 which might be taken to avoid the anticipated delay in Substantial Completion. The City shall  
16 not be required to approve a Change Order as a means to avoid the anticipated delay. The  
17 General Construction Contract will contain provisions consistent with the provisions of this  
18 Section 13.3.

19           **13.4 Liquidated Damages**

20           In the event Peregrine fails to achieve Substantial Completion by the Substantial  
21 Completion Date, as may be extended by Excused Delays and as provided in Section 13.2  
22 (excluding a breach of the General Construction Contract by the Contractor), Peregrine shall  
23 make a claim against the Contractor for liquidated damages allowed under the General

1 Construction Contract, diligently pursue that claim, and upon recovery from the Contractor, but  
2 subject to Section 14.2.3, Peregrine may retain the total liquidated damages recovered  
3 (“Liquidated Damages”).

#### 4 **SECTION 14 ALLOCATION OF COSTS**

##### 5 **14.1 Definitions**

6 **14.1.1** “Peregrine Costs” are those costs to be borne and paid by Peregrine  
7 pursuant to the Agreement and outside or in addition to the Peregrine Contribution, which are not  
8 to be reimbursed to Peregrine. Without limiting the generality of the preceding sentence, and in  
9 addition to Peregrine Costs described or designated elsewhere in this Agreement, if any,  
10 Peregrine Costs include:

11 **14.1.1.1** Peregrine’s internal management, administrative and overhead  
12 costs, which shall include the work of Merritt Paulson, Don Mazziotti, Greg Peden, Vera Katz,  
13 Steven Siegel and their associated companies, including Shortstop LLC, Siegel Consulting and  
14 the Gallatin Group LLC; provided that costs incurred by Peregrine pursuant to the Project  
15 Management Agreement on or after May 28, 2009, shall be Project Costs;

16 **14.1.1.2** Interest, penalties, or other fees, expenses, costs or charges owed  
17 by Peregrine by reason of failure to pay Peregrine Costs or Project Costs (in excess of the amount  
18 of the Public Contribution) when and as they come due;

19 **14.1.1.3** Damages payable to the City for Peregrine’s breach of this  
20 Agreement or any of the Related Agreements;

21 **14.1.1.4** Costs associated with Peregrine’s defense of any suit, claim or  
22 other proceeding, where such defense is an obligation of Peregrine pursuant to this Agreement;

1                                   **14.1.1.5** Peregrine's in-house and outside attorneys' fees and expenses  
2 incurred prior to Closing, and, except as otherwise expressly provided in this Agreement,  
3 following Closing;

4                                   **14.1.1.6** Travel and entertainment costs of Peregrine or for any Retained  
5 Party, except for reasonable costs for meals while working and for reasonable travel to confer  
6 with the Architect, which shall be Project Costs;

7                                   **14.1.1.7** Costs incurred by architects, engineers, contractors,  
8 subcontractors and consultants who are not Retained Parties or do not become Retained Parties in  
9 accordance with this Agreement;

10                                   **14.1.1.8** Retained Parties not acting under City-approved Retained Party  
11 Contracts;

12                                   **14.1.1.9** Costs incurred by Peregrine in acquiring and operating an MLS  
13 team;

14                                   **14.1.1.10** Costs associated with the operation of the Stadium;

15                                   **14.1.1.11** Costs, other than Wind Down Costs, incurred by Peregrine after  
16 a termination of this Agreement;

17                                   **14.1.1.12** Any and all costs and expenses directly or indirectly related to  
18 or associated with the design and construction of the Clinic Facility;

19                                   **14.1.1.13** Any costs or expenses whatsoever not directly related to design  
20 and construction of the Project Improvements, which exclusion includes, without limitation,  
21 acquisition of the MLS team, franchises, advertising and vendor relationships, relocation of the  
22 Portland Beavers, office and suite furnishings not including those located inside the Stadium, and  
23 community outreach programs; and

1                                   **14.1.1.14** Any other cost or expense related to construction of the Project  
2 Improvements that is not a City Cost, and that has not been approved by the City as a Project  
3 Cost.

4                                   **14.1.2** "City Costs" are those costs to be borne and paid by the City pursuant to  
5 the Agreement and outside or in addition to the City Contribution, which are not to be  
6 reimbursed to the City. Without limiting the generality of the preceding sentence and in addition  
7 to City Costs described or designated elsewhere in this Agreement, City Costs include:

8                                   **14.1.2.1** Interest, penalties, or other fees, expenses, costs or charges owed  
9 by the City by reason of failure to pay City Costs or Project Costs (up to the amount of the Public  
10 Contribution) when and as they come due;

11                                   **14.1.2.2** All costs related to the City's removal of liens, claims and  
12 encumbrances affecting the Stadium, caused by the City, and which are not Permitted Exceptions  
13 and which were exceptions to title prior to Closing;

14                                   **14.1.2.3** All costs associated with the City's defense of any suit, claim or  
15 other proceeding, where such defense is an obligation of the City pursuant to this Agreement;

16                                   **14.1.2.4** Damages payable to Peregrine for the City's breach of this  
17 Agreement or any of the Related Agreements;

18                                   **14.1.2.5** The City's in-house and outside attorneys' fees and expenses  
19 incurred prior to Closing, and, except as otherwise expressly provided in this Agreement,  
20 following Closing;

21                                   **14.1.2.6** The City's staff and office overhead, except those items  
22 specifically included in Project Costs;

1 14.1.2.7 The City's cost of obtaining Interim Financing and issuing  
2 Stadium Bonds; and

3 14.1.2.8 Costs of the Art Program approved by the City that are in excess  
4 of the Art Budget.

5 14.1.3 "Project Costs" are all costs related to the Project Improvements, including  
6 the Architectural Work, except those costs otherwise identified in this Agreement as, or allocated  
7 to, Peregrine Costs or City Costs. Project Costs are identified in the Project Budgets. The  
8 maximum amount of Project Costs which the City is obligated to fund is equal to the Public  
9 Contribution. The City may increase but not decrease the Public Contribution in its sole  
10 discretion. Without limiting the costs included in Project Costs, the Parties agree that Project  
11 Costs include the Art Program up to the Art Budget and fees and costs of the City's Consulting  
12 Architect, Construction Representative and cost estimator.

## 13 14.2 General Terms and Conventions

14 14.2.1 The concept of "cost increases" is the difference between the actual cost  
15 reflecting the change or event in question, and a reasonable estimate of what the cost would have  
16 been but for the change or event in question, taking into account such things as lost savings. The  
17 "change or event in question" should include related changes and events so that the cost increase  
18 is "net" of related savings. For example, a change which increases the cost of an item but  
19 shortens the construction time and reduces the cost of another item should be netted.

20 14.2.2 Language to the effect that "each Party" or "a Party" "shall bear its own  
21 costs" with respect to some event or responsibility means that the costs will be either a Peregrine  
22 Cost or a City Cost, but not a Project Cost. Language to the effect that costs should be "paid

1 equally” means the cost is split equally as a Peregrine Cost and City Cost, but is not a Project  
2 Cost, unless otherwise provided.

3 **14.2.3** Except as otherwise provided in Section 8.8, payments by and recoveries  
4 from third parties (net of costs to recover, such as for legal costs) shall be appropriately allocated  
5 and credited to Project Costs, City Costs and Peregrine Costs. To the extent such payment and  
6 net recovery proceeds may be received while there are or will be outstanding unpaid Project  
7 Costs, City Costs and/or Peregrine Costs, respectively, such proceeds shall be used to pay such  
8 respective Project Costs, City Costs and/or Peregrine Costs. To the extent such proceeds are  
9 received after there are no longer any outstanding Project Costs, City Costs and/or Peregrine  
10 Costs for which such proceeds have been credited, such proceeds shall be distributed as follows:  
11 (a) proceeds credited to City Costs shall be paid to the City; (b) proceeds credited to Peregrine  
12 Costs shall be paid to Peregrine; and (c) proceeds credited to Project Costs shall be paid to  
13 Peregrine and the City in proportion to their contributions to Project Costs expended toward the  
14 Project, in all events after credit to the City and Peregrine for any overpayments in excess of  
15 amounts they were otherwise required to pay (either as Project Costs, City Costs, or Peregrine  
16 Costs, as the case may be).

### 17 **14.3 Disputed Costs for Project Improvements**

18 **14.3.1** If at any time during construction of the Project Improvements, the City  
19 believes that the cost of any portion of the Project Improvements is properly a Peregrine Cost, the  
20 City shall promptly give notice of that fact to Peregrine together with a written statement setting  
21 forth its reasons why such costs for the Project Improvements are a Peregrine Cost. The  
22 providing of such notice to Peregrine shall in no event delay the City’s approval of payment of  
23 putative Project Costs up to the amount of the Public Contribution.

1                   **14.3.2** If at any time during construction of the Project Improvements, Peregrine  
2 believes that the cost of any portion of the Project Improvements is properly a City Cost,  
3 Peregrine shall promptly give notice of that fact to the City together with a written statement  
4 setting forth its reasons why such costs for the Project Improvements are a City Cost. The  
5 providing of such notice to the City shall in no event delay Peregrine's approval of payment of  
6 putative Peregrine Costs with respect to the Project Improvements or payment of the Peregrine  
7 Contribution with respect to the Project Improvements.

8                   **14.3.3** The failure of the City or Peregrine to promptly notify the other of their  
9 respective beliefs as to the appropriate allocation of costs as a City Cost or a Peregrine Cost shall  
10 not preclude Peregrine or the City from resolving the proper allocation as otherwise provided for  
11 in this Agreement, unless the failure to promptly notify has materially and adversely prejudiced  
12 the other Party. Peregrine and the City acknowledge that it is in the interest of both Parties to  
13 attempt to resolve such cost allocation matters as the Project Improvements are being  
14 constructed. Any resolution of such matters during construction shall be evidenced in writing  
15 and signed by the Construction Representative of the City and Peregrine. Peregrine and the City  
16 shall attempt within thirty (30) days after the end of each calendar quarter to issue a mutually  
17 agreed statement showing the amount expended for the Project Improvements, and allocating  
18 each cost as: a Project Cost, a City Cost, or a Peregrine Cost.

19                   **14.3.4** For purposes of this Agreement, a "Disputed Cost" is a cost incurred for  
20 the Project Improvements that cannot be mutually agreed by Peregrine and the City to be a  
21 Project Cost, a City Cost or a Peregrine Cost, within the thirty (30)-day periods set forth in  
22 Sections 14.3.2 and 14.3.3. All Disputed Costs will be subject to Dispute Resolution  
23 immediately following Final Completion of the Project Improvements. If the Dispute Resolver



1 determines that any Disputed Costs paid by the City should have been paid by Peregrine, or that  
2 any Disputed Costs paid by Peregrine should have been paid by the City, the Dispute Resolver  
3 shall in addition award Economic Interest or Default Interest on such amount pursuant to Section  
4 31.8, to the Party which improperly paid such costs.

#### 5 **SECTION 15 PEREGRINE'S FINANCING**

6 Peregrine will fund the Peregrine Contribution out of Peregrine's cash. The City  
7 hereby notifies Peregrine that the date for placement of the City's Interim Financing is the  
8 Closing Date. At Closing and upon Peregrine's execution of the Project Funding Agreement  
9 Peregrine shall pay the Peregrine Contribution when and as required by the Project Funding  
10 Agreement.

#### 11 **SECTION 16 PUBLIC FINANCING**

##### 12 **16.1 City's Financing**

13 To provide the Public Contribution, the City intends to obtain Interim Financing,  
14 and long term financing through the sale of the Stadium Bonds, the cost of such financing to be a  
15 City Cost. The price and terms of the Stadium Bonds shall be established by the City in its sole  
16 discretion. Revenues from the Stadium Bonds may be used for purposes other than the Project,  
17 so long as the City fully funds its Public Contribution.

##### 18 **16.2 Facilitation of Stadium Bonds**

19 The Parties shall each use Reasonable Efforts to structure or restructure their  
20 contributions to and other activities regarding the Project in a manner that would allow for the  
21 issuance of the Stadium Bonds, and, if the City desires, to maintain the bonds as exempt from  
22 Federal Income Taxes.

1    **SECTION 17 FUNDING OBLIGATIONS**

2           **17.1 Definitions**

3            **17.1.1** The "Peregrine Contribution" is: \$19,100,000, which amount is  
4 comprised of (a) a \$8,000,000 cash contribution; and (b) \$11,100,000 of additional cash  
5 representing Prepaid Payments and Prepaid User Fees related to the use of the Stadium.

6            **17.1.2** The "Project Payment Account" is one or more interest bearing accounts at  
7 U.S. Bank National Association which will receive the Peregrine Contribution and the Public  
8 Contribution and out of which Project Costs will be paid. The Project Payment Account is  
9 established and administered pursuant to the Project Funding Agreement. Interest earned on the  
10 funds in the Project Payment Account shall be held in the Project Payment Account and used to  
11 pay Project Costs.

12           **17.1.3** The "Public Contribution" is: \$11,900,000, which amount is comprised of  
13 (a) \$11,200,000 of cash from the City's Spectator Facility Fund and Interim Financing or Bond  
14 Proceeds and (b) \$700,000 of value that may be contributed by the City in cash or given through  
15 waivers of City Charges to include Art, as elected by the City in its sole and absolute discretion.

16           **17.1.4** If the Final Project Budget is less than \$31.0 million, then the portion of the  
17 Public Contribution supported by cash from the Spectator Facility Fund and Interim Financing or  
18 Bond Proceeds and the Peregrine Contribution will be reduced by the amount by which the  
19 Closing Project Budget is less than \$31.0 million multiplied by the Parties' respective Shares;  
20 provided, however, that, at the City's election, (a) the Public Contribution shall be reduced by the  
21 amount of any cost savings in City Charges or the Art Budget, or (b) cost savings in City Charges  
22 or the Art Budget shall be applied to City Costs.

**17.2 Funding**

Peregrine and the City will enter into the Project Funding Agreement at the Closing. Peregrine and the City each agree to perform their respective obligations under the Project Funding Agreement and to thereby fund the Peregrine Contribution and the Public Contribution. The Peregrine Contribution and the Public Contribution will be used to pay Project Costs on a proportional basis, based on a fraction, the numerator of which is the Public Contribution or the Peregrine Contribution, as applicable, and the denominator of which is \$31,000,000. In other words, subject to and in accordance with the terms of this Agreement and the Project Funding Agreement, each Draw Request shall be funded 61.6% by Peregrine and 38.4% by the City. The Parties acknowledge that Peregrine has incurred Project Costs prior to the Effective Date and may incur Project Costs between the Effective Date and Closing. Accordingly, within ten (10) Business Days of Closing, the City and Peregrine will calculate and provide written instructions to U.S. Bank indicating the amount of Project Costs to be paid solely from the Public Contribution in order to bring the amount funded by the City to 38.4% of Project Costs incurred and paid to that date. Thereafter, Project Costs will be funded by each Party in accordance with the percentages set forth in this Section 17.2.

**17.3 Responsibility For Cost Overruns**

A "Cost Overrun" exists if, upon Final Completion of the Project Improvements, the actual cost of the Project Improvements exceeds the Final Project Budget amount, excluding cost increases that are to be paid as City Costs or as Peregrine Costs. Cost Overruns shall be funded as follows:

1           **17.3.1** If the City or Peregrine determines that a Cost Overrun may be likely, the  
2 Party making such a determination will give written notice of that fact to the other, with an  
3 explanation of the reason for the Cost Overrun and the anticipated amount of the Cost Overrun.

4           **17.3.2** In response to a potential Cost Overrun, either Party may propose Scope  
5 Changes or value engineering in an effort to reduce or eliminate the Cost Overrun. However,  
6 each Party shall be free to agree or not to agree to Scope Changes or value engineering in its sole  
7 discretion.

8           **17.3.3** In response to a potential Cost Overrun which remains after the  
9 application of Section 17.3.2, the Parties may elect to pay for the Cost Overrun by using the  
10 Project Contingency, which decision will require the approval of both the City and Peregrine. In  
11 the event of an actual Cost Overrun, the Parties agree to apply the Project Contingency to pay for  
12 the actual Cost Overrun.

13           **17.3.4** If a Cost Overrun exists after the application of Sections 17.3.2 and 17.3.3,  
14 then Peregrine shall be responsible for and shall pay into the Project Payment Account the Cost  
15 Overrun amount. In the event that Peregrine has paid Cost Overrun amounts, then Peregrine  
16 shall be entitled to an extension of the Operating Agreement at no annual payment and no  
17 payment to the City of collected user fees during lease years 26-28 computed as follows: the  
18 scheduled User Fees and Annual Payments for the Stadium shall be discounted to present value  
19 at a discount rate of 8% for that period of time during lease years 26-28 such that the discounted  
20 scheduled Annual Payments and User Fees equals the lesser of (a) \$1,000,000 or (b) the actual  
21 Cost Overrun amount, all as set forth in greater detail in the Operating Agreement.

1           **17.4 Return of Funds**

2           **17.4.1** As soon as reasonably possible, but not later than ninety (90) days after  
3 Final Completion, the City and Peregrine shall each be entitled to claim the right to  
4 reimbursement on account of a previously paid City Cost or Peregrine Cost that was in fact a  
5 Project Cost. If, in fact, the City paid as a City Cost a cost item that was properly a Project Cost,  
6 then the City shall be reimbursed that cost amount by either a reduction in the Public  
7 Contribution or by cash reimbursement, as elected by the City. If, in fact, Peregrine paid as a  
8 Peregrine Cost a cost item that was properly a Project Cost and, subject to the terms of Section  
9 17.1.4, the sum of the Public Contribution and Peregrine Contribution has not been fully spent on  
10 Project Costs, Peregrine shall be reimbursed that cost amount by either a reduction in the  
11 Peregrine Contribution or by cash reimbursement, as elected by Peregrine, up to the amount of  
12 the unspent funds. Any Dispute under this Section 17.4.1 shall be resolved through Dispute  
13 Resolution.

14           **17.4.2** If after Final Completion there are any claims against third parties, and  
15 such claims are for recovery of previously paid City Costs or Peregrine Costs, then the Parties  
16 will cooperate to assign such claims to the City or Peregrine, respectively. If after Final  
17 Completion there are any claims against third parties and such claims are for recovery of Project  
18 Costs, then Peregrine and the City shall jointly pursue those claims, and the recovery shall be  
19 allocated pursuant to Section 14.2.3.

20           **17.4.3** As soon as reasonably possible but not later than ninety (90) days after  
21 Final Completion, if the sum of the Public Contribution and the Peregrine Contribution has not  
22 been fully spent on Project Costs and/or fully utilized or reduced by the application of  
23 Sections 17.4.1 and 17.4.2, then the remaining balance of the sum of the Public Contribution and

1 the Peregrine Contribution shall be paid to the City, and the City will reserve the same for  
2 structural repairs and replacements of building systems at the Stadium.

### 3 17.5 Guaranty

4 At Closing, the Guarantors will execute the Revenue Stream Guaranty attached  
5 hereto as Exhibit 17.5.

## 6 SECTION 18 ADMINISTRATION OF PROJECT PAYMENT ACCOUNT FUNDS

### 7 18.1 Disbursement Procedures in General

8 At Closing, the City and Peregrine will execute the Project Funding Agreement in  
9 order to provide for procedures for the disbursement of funds to pay for Project Costs. These  
10 procedures shall be consistent with the procedures contained in the applicable Retained Party  
11 Contracts for the Project Improvements and shall be consistent with the provisions of this  
12 Section 18.

### 13 18.2 Specific Disbursement Procedures

14 Except to the extent otherwise provided in the Project Funding Agreement, the  
15 provisions and procedures in Sections 18.2 and 18.3 shall apply to each Draw Request:

16 **18.2.1** Before the first Draw Request applicable to any construction costs,  
17 Peregrine shall submit to the City a schedule of values allocated to various portions of the work,  
18 prepared in such form and supported by such data to substantiate its accuracy as the City may  
19 require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the  
20 Draw Request. The schedule of values shall be prepared in such a manner that each major item  
21 of the work and each subcontracted item of the work is shown as a separate line item on AIA  
22 Documents G702 and G703, Application and Certificate for Payment, Continuation Sheet, or  
23 other form acceptable to the City. The use of one or more AIA forms for Draw Requests or any

1 component thereof shall not have the effect of incorporating into the General Construction  
2 Contract or this Agreement any AIA terms or provisions.

3 **18.2.2** Peregrine shall prepare and submit to the City each month (or more  
4 frequently if required by the City) a Draw Request for Project Costs in accordance with the  
5 monthly draw schedule attached to the Project Funding Agreement. The monthly Draw Request  
6 will be in two parts: Project Costs incurred or paid by Peregrine which are not covered by the  
7 Contractor's General Construction Contract, and the Application for Payment submitted by the  
8 Contractor under the General Construction Contract. The Draw Request shall be in a format  
9 reasonably acceptable to the City, and prior to the Closing Date, Peregrine shall have obtained  
10 the City's approval of the Draw Request form. The Draw Request shall be supported by  
11 adequate backup documentation sufficient to reasonably demonstrate that the costs claimed are  
12 accurate and are Project Costs. The Draw Request shall be correlated to the schedule of values  
13 referred to in Section 18.2.1. Each Draw Request shall be accompanied by the relevant  
14 Certificate for Payment submitted by the Architect to Peregrine and all supporting documentation  
15 required to be included with the Application for Payment as set forth on Exhibit 18.2.2.

16 **18.2.3** Draw Requests may not include requests for payment of amounts due and  
17 owing to third parties that Peregrine or the Contractor does not intend to pay because of a dispute  
18 or other reason. Draw Requests shall be certified by the Architect and Peregrine, and shall be  
19 accompanied by sworn statements and lien waivers from Retained Parties for whom payment is  
20 requested in the Draw Request.

21 **18.2.4** Peregrine warrants that title to all work covered by a Draw Request will  
22 pass to the City no later than the time of payment. Peregrine further warrants that upon submittal  
23 of a Draw Request all work for which a Certificate for Payment has been previously issued and

1 payments received from the Project Payment Account shall be free and clear of liens, claims,  
2 security interests or encumbrances in favor of any party. Payment for materials and equipment  
3 stored on or off the Project Site shall be conditioned upon compliance by the Contractor with  
4 procedures satisfactory to the City to establish the City's title to such materials and equipment or  
5 otherwise protect the City's interest, and shall include applicable insurance, storage and  
6 transportation to the Project Site for such materials and equipment stored off the Project Site.

7 **18.2.5** The City's issuance of payment will not constitute a representation or  
8 inference that the City has made inspections to check the quality or quantity of the work;  
9 reviewed adequacy of designs, compliance of the work with designs, or adequacy of construction  
10 means, methods, techniques, sequences or procedures; finally approved or accepted any item of  
11 cost in the Draw Request; or examined or approved how or for what purpose Peregrine or any  
12 Retained Party used money previously paid on account of this Agreement. The City may, at its  
13 election, make payments jointly to the order of Peregrine and any Retained Party or  
14 subcontractor.

15 **18.2.6** The City shall approve or disapprove of Draw Requests in accordance  
16 with the terms of this Section 18 and with the procedures and time frames set forth in the Project  
17 Funding Agreement. In addition to the City's right to disapprove a Draw Request for failure of  
18 Peregrine to submit a complete Draw Request package, the City may disapprove any Draw  
19 Request and withhold payment in whole or in part, to the extent: (i) the Draw Request requests  
20 payment for costs that are not Project Costs; (ii) Peregrine is exercising a right to withhold  
21 payment from a Retained Party pursuant to the terms of its contract with the Retained Party; (iii)  
22 there are Material Defects and other materially defective work that has not been remedied; (iv)  
23 Peregrine or any Retained Party has failed to make payments in accordance with a previously



1 approved Draw Request; (v) there is uninsured damage to City-owned property; or (vi) Peregrine  
2 or a Retained Party has failed to carry out the Phase One Work or the Phase Two Work in  
3 accordance with the 100% Construction Documents or this Agreement. When the above reasons  
4 for disapproval of a Draw Request payment are removed, the City shall approve the Draw  
5 Request and payment for amounts previously disapproved will be made to the Project Payment  
6 Account. If Peregrine disputes any determination to withhold funds, Peregrine nevertheless shall  
7 cause the work to be continuously prosecuted expeditiously to completion.

8 **18.2.7** As described in the Project Funding Agreement, the City and Peregrine  
9 will meet to review a Draw Request and to identify any deficiencies in that Draw Request or any  
10 questions the City may have. Thereafter, Peregrine will promptly remedy any deficiency in a  
11 Draw Request and respond to any City questions. Assuming a completed Draw Request  
12 containing all information required by the City, and assuming Peregrine's prompt response to  
13 City questions, the City will either approve of, partially approve of, or reject the Draw Request  
14 by the dates set forth in the Project Funding Agreement. The City and Peregrine shall make or  
15 cause to be made payments into the Project Payment Account by the dates in the monthly draw  
16 schedule attached to the Project Funding Agreement, pursuant to the Project Funding Agreement,  
17 sufficient to pay the approved or partially approved Draw Request and by the next Business Day,  
18 payments will be made out of the Project Payment Account to the Contractor and Retained  
19 Parties entitled to payment as set forth in that approved or partially approved Draw Request.

20 **18.2.8** The failure of the City to approve a Draw Request when there is no basis  
21 under this Section 18 for not approving a Draw Request shall constitute a breach of this  
22 Agreement.

**18.3 Failure to Disburse**

If the City or Peregrine should fail to disburse payment or underpay Project Costs as contemplated by Section 18.2, and it is determined by Dispute Resolution that the City or Peregrine should have made payment, then the Party failing to make payment shall be obligated to pay the amount of the disbursement that should have been made but was not, plus, as a City Cost or Peregrine Cost, all additional expenses and costs reasonably incurred by the other Party as a result of the Party's failure to disburse or as a result of underpayment and the other Party shall be entitled to receive from the Party Economic Interest or Default Interest on any such amounts as provided for in Section 31.8. Notwithstanding the provisions of Section 19.7 regarding costs and expenses incurred by Peregrine and the City, the Dispute Resolver shall include the attorneys' fees and costs of the most prevailing Party, which shall be paid in inverse proportion of the award (e.g., if Peregrine is awarded eighty percent (80%) of its claimed amount, Peregrine shall pay twenty 20 percent (20%) and the City shall pay eighty percent (80%) of the attorneys' fees and costs). The costs of the Dispute Resolver shall be paid as provided for in Section 19.7.

**18.4 Designation of Representatives**

At or before Closing, the City and Peregrine shall designate in writing to each other their respective Funding Representatives (including the Alternates), for the purpose of approving the Draw Requests. Peregrine shall provide the name of the City's and Peregrine's Funding Representatives to the Contractor and Architect. Peregrine shall provide to the City notice of the names of the Funding Representatives for the Contractor and Architect along with an exemplar of the authorized signature of each Funding Representative. The Funding Representatives shall establish mutually agreeable times, locations and procedures for the

1 purpose of reviewing, revising and approving Draw Requests relating to the Project  
2 Improvements.

### 3 18.5 Audit Rights

4 The City shall have the right to audit the books and records of Peregrine, the  
5 Contractor, and each Retained Party, that relate to Project Costs or Disputes. Upon at least forty-  
6 eight (48) hours notice, the City shall have the right to audit the books and records of Peregrine  
7 pertaining to Project Costs at any time. Peregrine shall reasonably cooperate with any City audit.  
8 The City will provide Peregrine with a copy of the audit promptly after it is completed. If the  
9 audit reveals that Peregrine has used or applied funds from the Project Payment Account not in  
10 accordance with this Agreement, then Peregrine shall restore the funds so misused or misapplied  
11 to the Project Payment Account as a Peregrine Cost with Default Interest.

## 12 SECTION 19 CONSTRUCTION DISPUTE RESOLUTION

### 13 19.1 When Applicable

14 19.1.1 The Dispute Resolution process is hereby established for the resolution of  
15 any disputes and claims arising out of or relating to the design and construction of the Project  
16 Improvements and the allocation of Project Costs, City Costs or Peregrine Costs and for other  
17 designated disputes referred to in this Agreement (a "Dispute" or "Disputes"). Dispute  
18 Resolution shall be the complete, final, and binding means (except as provided in Section 19.6)  
19 for resolving Disputes referred to in the preceding sentence or where this Agreement expressly  
20 provides that a matter is subject to Dispute Resolution. Dispute Resolution shall consist of the  
21 processes set forth in this Section 19, including mediation by a single mediator followed by  
22 arbitration by a single arbitrator (the "Dispute Resolver") in accordance with the terms of this  
23 Section 19.1; provided, however, that for disputes involving the Contractor, the Architect, and/or

1 the Project Manager, mediation will not be required prior to arbitration. The Dispute Resolver  
2 will provide special expertise to assist in, facilitate and, if required, arbitrate the timely and  
3 equitable resolution of Disputes between Peregrine and the City, in an effort to avoid  
4 construction delay and litigation.

5 **19.1.2** If a Dispute also involves a dispute by or against one or more Retained  
6 Parties, Peregrine shall promptly give notice to the City of any binding dispute resolution  
7 procedure under the contract with the Retained Party involved in the dispute ("Related Dispute  
8 Resolution"), and the City shall have the opportunity to participate in the Related Dispute  
9 Resolution as a party. Any factual or legal determinations established in the Related Dispute  
10 Resolution shall be binding upon Peregrine and the City (if the City received sufficient prior  
11 written notice of the Related Dispute Resolution proceeding to participate in the same) in any  
12 subsequent proceeding provided for under this Agreement. The City further agrees to cooperate,  
13 to the extent reasonably requested by Peregrine, in connection with any dispute subjected to any  
14 Related Dispute Resolution or any executive resolution procedure provided for in contracts with  
15 a Related Party.

## 16 **19.2 Resolution of Disputes Encouraged**

17 **19.2.1** It is not intended that Dispute Resolution be a substitute for the Parties to  
18 amicably and reasonably resolve their differences. It is intended that the Dispute Resolution will  
19 encourage Peregrine and the City to resolve potential disputes without resorting to this procedure.  
20 It is intended that Disputes will be resolved promptly, with minimum expense, and with  
21 minimum disruption to the administration and performance of the design and construction of the  
22 Project Improvements. Accordingly, in the event of a Dispute, the City's Construction  
23 Representative and Peregrine's Construction Representative shall meet to attempt to resolve the

1 matter if either party requests such a meeting. The City's Construction Representative and  
2 Peregrine's Construction Representative shall meet over a period of ten (10) Business Days and  
3 shall work diligently and in good faith to try to resolve the Dispute. Either Party may include its  
4 Funding Representative in the foregoing process.

5 **19.2.2** If the Dispute cannot be resolved by the Authorized Parties it shall be  
6 referred to Merritt Paulson for Peregrine, and the City's CAO, who also shall have the authority  
7 to resolve the Dispute. Those persons shall meet for negotiations at a mutually agreed upon time  
8 and place after having had a sufficient time to review information related to the Dispute, which  
9 time period shall not exceed thirty (30) days.

10 **19.2.3** If the Parties are unable to resolve the Dispute in accordance with Sections  
11 19.2.1. and 19.2.2, the Dispute will be submitted to mediation. The mediator shall be chosen by  
12 mutual agreement of the Parties within ten (10) days of the last meeting held under Section  
13 19.2.2 based on the criteria set forth in Section 19.3. If the Parties cannot agree upon a mediator,  
14 then the Dispute will be presented to a mediator selected by the Presiding Judge of Multnomah  
15 County, Oregon. The mediation fee shall be borne equally by the City and Peregrine.

16 **19.2.4** If the Dispute is not resolved by mediation, the City and Peregrine agree to  
17 resolve the dispute by arbitration with Arbitration Service of Portland, Inc. ("ASP") and in  
18 accordance with ASP's procedures. Peregrine shall pay the arbitration fee required to initiate the  
19 arbitration, which shall be a cost of the arbitration.

20 **19.2.4.1** The City and Peregrine shall agree upon the appointment of an  
21 arbitrator with qualifications set forth in Section 19.3 for a Dispute Resolver. In the event of  
22 disagreement, each Party shall appoint one arbitrator within ten (10) Business Days of the

1 decision to arbitrate. The two arbitrators selected by the Parties will appoint a third arbitrator to  
2 act as the sole arbitrator.

3 **19.2.4.2** The decision of the arbitrator shall be final, binding and  
4 conclusive upon the Parties and subject to appeal only on those grounds for which arbitrations in  
5 Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any  
6 court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have  
7 the power to award consequential or punitive damages and shall not have the power to rescind  
8 this Agreement, but may award attorneys fees and costs of arbitration.

9 **19.2.5** If the Dispute is not arbitrated and remains unresolved, either Party may  
10 pursue resolution through litigation.

### 11 **19.3 Dispute Resolver**

12 **19.3.1** Peregrine and the City shall mutually establish with the Dispute Resolver,  
13 the retainer and hourly charge payable to him or her and any reimbursable costs. The fees and  
14 costs of the Dispute Resolver shall be split by the Parties unless, in arbitration, the arbitrator  
15 awards costs.

16 **19.3.2** The Dispute Resolver shall have at least five (5) years of experience with  
17 the type of construction involved in the Project and with comparable experience in the  
18 interpretation of construction contract documents. Additional criteria and limitations for the  
19 Dispute Resolver shall be as follows:

20 **19.3.2.1** No such person shall have an ownership interest in any Party (or  
21 Affiliate) to this Agreement, the Architect, the Contractor, any Retained Parties or a direct or  
22 indirect financial interest in this Agreement, except for payment for services as the Dispute  
23 Resolver.

1                   **19.3.2.2** No such person shall have been employed by or retained by  
2 Peregrine (or any Affiliate), the City, the Architect or the Contractor within a period of two (2)  
3 years prior to the Effective Date other than persons previously retained as mediators or  
4 arbitrators.

5                   **19.3.2.3** No such person shall have had prior involvement in the Project  
6 of a nature which could compromise the person's ability to resolve disputes impartially.

7                   **19.3.2.4** No such person shall be employed by any Party (or Affiliate) to  
8 this Agreement or by the Architect or the Contractor while the Dispute is pending.

9                   **19.3.2.5** No discussion or agreement shall be made between any Dispute  
10 Resolver and any party to this Agreement or the Contractor or the Architect for employment.

11                   **19.3.3** In case the Dispute Resolver needs to be or is to be replaced, the  
12 replacement Dispute Resolver will be jointly selected by the Parties or, if they cannot agree, then  
13 by the Presiding Judge of Multnomah County, Oregon. The appointment of a replacement  
14 Dispute Resolver will begin promptly upon determination of the need for replacement and shall  
15 be completed within thirty (30) days thereafter.

16                   **19.3.4** Service of a Dispute Resolver may be terminated at any time with no less  
17 than thirty (30) days notice as follows:

18                   **19.3.4.1** Upon failure of the Dispute Resolver to perform the duties of the  
19 Dispute Resolver under this Agreement, other than for reasonable cause;

20                   **19.3.4.2** By mutual agreement of the City and Peregrine; or

21                   **19.3.4.3** By death, disability or resignation of the Dispute Resolver.

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

1           **19.4   Operation of Dispute Resolver**

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

12           **19.5   Procedure and Schedule for Dispute Resolution**

13           **19.5.1** The Dispute Resolver shall consider Disputes submitted to him or her as  
14   quickly as possible, taking into consideration the particular circumstances, including any urgency  
15   caused by the need to avoid any delays in the work or the need to remove or correct promptly any  
16   work performed in error, and the time required to prepare detailed documentation.

17           **19.5.2** A Party submitting a Dispute to the Dispute Resolver shall submit the  
18   matter in writing to the Dispute Resolver and the other Party and shall include documents and  
19   other information the Party believes is necessary to substantiate its position.

20           **19.5.3** When a Dispute is submitted to the Dispute Resolver, the Dispute  
21   Resolver shall decide when to hold mediation meetings or the arbitration, as applicable. For an  
22   urgent matter, based on the opinion of the Party submitting the matter, unless the Dispute  
23   Resolver determines otherwise, the Dispute Resolver shall hold the arbitration or mediation at his



1 or her earliest convenience, but in no event later than ten (10) Business Days after submission of  
2 the Dispute to the Dispute Resolver.

3 **19.5.4** Peregrine and the City shall each be notified of the date, time and place for  
4 hearing or meeting at the same time and at least two (2) Business Days in advance (except  
5 adjourned hearings shall be as announced at the hearing) and be afforded an opportunity to be  
6 heard by the Dispute Resolver and to offer evidence. All hearings shall be conducted in the City  
7 of Portland.

8 **19.5.5** In any Dispute, the City and Peregrine shall have full access to each  
9 other's books and records relating to Project only and the right to make copies to be used in such  
10 Dispute Resolution.

11 **19.5.6** Procedures for the conduct of hearings shall be as established by the  
12 Dispute Resolver, and unless the Dispute Resolver determines otherwise, shall generally follow  
13 ASP's rules. The Dispute Resolver's determinations or resolution of the Dispute and any awards  
14 based thereon will be given in writing to Peregrine and the City within five (5) days of  
15 completion of the hearing, and shall be final and conclusive and binding on the Parties and  
16 judgment may be entered upon such determinations, resolutions and awards in accordance with  
17 applicable Laws in a court of competent jurisdiction.

18 **19.5.7** For purposes of arbitration, the terms and provisions of this Section 19.5  
19 shall only apply to the extent such terms and provisions are consistent with the method of  
20 arbitration selected by the Parties (or chosen by default if the Parties cannot agree).

## 21 **19.6 Equitable Proceeding**

22 In the event a party desires to seek interim relief, whether affirmative or  
23 prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim

1 equitable relief with respect to a Dispute, either before or after the initiation of Dispute  
2 Resolution, that party may initiate the legal proceeding necessary to obtain such relief  
3 (“Equitable Proceeding”). Nothing in this Section 19.6 shall be construed to suspend or  
4 terminate the obligation of the Parties to comply with the procedures set forth in this Section 19  
5 with respect to the Dispute that is the subject of such Equitable Proceeding during the pendency  
6 of any such Equitable Proceeding, including any appeal or review. Notwithstanding the  
7 determination of the Dispute Resolver, any interim relief granted by such Equitable Proceeding  
8 shall not be reversed or modified by the Dispute Resolver’s determination, and any factual or  
9 legal determinations made in the preliminary injunction or permanent injunction stage of such  
10 Equitable Proceeding shall be binding upon the Parties in the Dispute before the Dispute  
11 Resolver.

#### 12 **19.7 Compensation**

13 Except as set forth in Section 19.2.4, all fees and expenses of the Dispute  
14 Resolver and any reimbursable expenses shall be shared equally by Peregrine and the City with  
15 the City’s portion to be a City Cost and Peregrine’s portion to be a Peregrine Cost. All costs and  
16 expenses incurred by Peregrine and the City in connection with any Dispute before the Dispute  
17 Resolver, including consultants’ and attorneys’ fees shall be borne by the City and Peregrine as a  
18 City Cost and Peregrine Cost respectively, except as provided in Section 18.3.

### 19 **SECTION 20 REPRESENTATIONS AND WARRANTIES**

#### 20 **20.1 City Representations and Warranties**

21 Subject to the qualifications and indemnifications set forth in Exhibit 20.1 entitled  
22 “Qualifications and Indemnifications Relating to City’s Representations and Warranties,” and the

1 other qualifications set forth in this Agreement, as of Closing, the City represents and warrants to  
2 Peregrine the following:

3           **20.1.1** The City is a municipal corporation duly organized and validly existing  
4 under the laws of the State of Oregon, and has full requisite municipal power and authority to  
5 execute, enter into and deliver this Agreement and each of the Related Agreements to which it is  
6 a party, and to perform its obligations under this Agreement, subject to any disclaimers or  
7 qualifications set forth in this Agreement and each of the Related Agreements to which it is a  
8 party.

9           **20.1.2** The execution, delivery and performance of this Agreement by the City  
10 and each of the Related Agreements to which it is a party and the consummation of the  
11 transactions contemplated in this Agreement have been duly authorized by all necessary  
12 municipal action on the part of the City. The Mayor and Auditor of the City are the persons duly  
13 authorized to execute this Agreement on behalf of the City and have so executed this Agreement.  
14 No further consent, approval or other authorization of or by any court, administrative agency or  
15 other governmental authority is required in connection with the execution, delivery and  
16 performance of this Agreement by the City and the consummation of the transactions  
17 contemplated in this Agreement.

18           **20.1.3** This Agreement is, when duly executed and delivered by the City and by  
19 Peregrine, the legal, valid and binding obligation of the City, fully enforceable in accordance  
20 with its respective terms, subject to any disclaimers or qualifications in this Agreement. The  
21 validity and enforceability of this Agreement may be limited by bankruptcy, insolvency,  
22 reorganization, moratorium, or other similar laws affecting creditors' rights generally, and by

1 equitable principles governing specific performance, injunctive relief, and other applicable  
2 remedies.

3           **20.1.4** Except as set forth in Exhibit 20.1, neither the execution, delivery nor  
4 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts  
5 with, or would constitute a default under or with respect to, the City Charter or any other  
6 organizational or organic documents of the City, any applicable law, regulation, rule, code,  
7 ordinance, policy or resolution of the City or of any other jurisdiction which is binding on the  
8 City; or any judgment, order, writ, injunction or decree of any court, administrative agency, or  
9 other governmental authority to which it is party or otherwise subject which is in any respect  
10 material to the transactions contemplated in this Agreement, subject to any disclaimers or  
11 qualifications in this Agreement.

12           **20.1.5** Except as set forth in Exhibit 20.1, neither the execution, delivery nor  
13 performance of this Agreement by the City violates or will violate, is prohibited by, conflicts  
14 with, will constitute a default under or with respect to, any other agreements, instruments,  
15 judgments or decrees to which the City is a party or is otherwise subject.

16           **20.1.6** Except as set forth in Exhibit 20.1, to the City's actual knowledge, based  
17 on the actual knowledge of the City Attorney, the attorneys at Ball Janik LLP who have actively  
18 worked on City's behalf in this matter, any member of the City Council, or the director or  
19 commissioner or other head of the following City Bureaus or Commissions: Bureau of  
20 Development Services, Bureau of Planning and Sustainability, Office of Management and  
21 Finance, no suit, litigation, arbitration or other proceeding is pending before or by any court,  
22 administrative agency or other governmental authority, or threatened, against the City or to which  
23 the City is or would become a party, seeking to restrain or prohibit, or seeking damages or other

1 relief in connection with, the execution and delivery of this Agreement or the consummation of  
2 the transactions contemplated in this Agreement, which might materially and adversely affect the  
3 City's Interim Financing, which might materially and adversely affect the use and operation of  
4 the Project as contemplated by this Agreement, or which might adversely affect in any way the  
5 validity, execution, delivery or performance of any of this Agreement by the City.

6 **20.1.7** Except as described in Exhibit 20.1, to the City's actual knowledge, based  
7 on the actual knowledge of the City Attorney, any member of the City Council, or the director,  
8 commissioner or other head of the following City Bureaus or Commissions: Bureau of  
9 Development Services, Bureau of Planning and Sustainability, Office of Management and  
10 Finance, the City has not received notice that the Stadium is currently in violation of any Laws or  
11 judicial or administrative decisions pertaining to historic preservation, industrial health matters  
12 or safety matters, but excluding Environmental Laws.

13 **20.1.8** As of Closing, the City has the ability to pay for the Public Contribution  
14 and City Costs at the times and in the manner required by and subject to the conditions of this  
15 Agreement.

16 **20.1.9** The City owns the Project Site (other than the MAC Parcel) in fee simple,  
17 free and clear of any liens, claims or encumbrances which are or would be senior to or which  
18 might otherwise adversely affect Peregrine's interest in or use or operation of the Stadium as  
19 contemplated by this Agreement, subject to the Permitted Exceptions.

## 20 **20.2 Peregrine Representations and Warranties**

21 Subject to the qualifications in paragraphs 1 and 6 of Exhibit 20.1, as of the  
22 Effective Date of this Agreement, and as of Closing, Peregrine represents and warrants to the  
23 City the following:

1           **20.2.1** Peregrine is a limited liability company duly organized and validly  
2 existing under the laws of the State of Delaware (and qualified to conduct business in the State of  
3 Oregon), and has full requisite power and authority to execute, enter into and deliver this  
4 Agreement and each of the Related Agreements to which it is a party, and to perform its  
5 obligations under this Agreement and each of the Related Agreements to which it is a party.

6           **20.2.2** The execution, delivery and performance of this Agreement by Peregrine  
7 and the Related Agreements to which it is a party and the consummation of the transactions  
8 contemplated in this Agreement have been duly authorized by all necessary action on the part of  
9 Peregrine. The Managers of Peregrine are duly authorized to execute this Agreement on behalf  
10 of Peregrine, a Manager of Peregrine has so executed this Agreement, and no further consent,  
11 approval or other authorization is required in connection with the execution, delivery and  
12 performance of this Agreement, and, as of the Closing, the Related Agreements, by Peregrine and  
13 the consummation of the transactions contemplated in this Agreement by Peregrine.

14           **20.2.3** This Agreement and each of the Related Agreements to which Peregrine is  
15 a party is when duly executed and delivered by Peregrine and the City, the legal, valid and  
16 binding obligation of Peregrine, fully enforceable in accordance with their respective terms. The  
17 validity and enforceability of this Agreement and each of the Related Agreements to which  
18 Peregrine is a party may be limited by bankruptcy, insolvency, reorganization, moratorium, or  
19 other similar laws affecting creditors' rights generally, and equitable principles governing  
20 specific performance, injunctive relief, and other applicable remedies.

21           **20.2.4** Neither the execution, delivery nor performance of this Agreement or any  
22 of the Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with,  
23 or would constitute a default under or with respect to, (a) Peregrine's operating agreement, or

1 (b) any judgment, order, writ, injunction or decree of any court, administrative agency, or other  
2 governmental authority to which it is party or otherwise subject which is in any respect material  
3 to the transactions contemplated in this Agreement.

4 **20.2.5** Peregrine is in compliance in all material respects with all Laws and is in  
5 compliance with all Laws with respect to the transactions contemplated in and by this Agreement  
6 and the Related Agreements.

7 **20.2.6** Neither the execution, delivery nor performance of this Agreement or any  
8 of the Related Agreements by Peregrine violates or will violate, is prohibited by, conflicts with,  
9 will constitute a default under or with respect to, any other agreements, instruments, judgments  
10 or decrees to which Peregrine is a party or is otherwise subject.

11 **20.2.7** To the best of Peregrine's actual knowledge, based on the actual  
12 knowledge of its Managers, Jeannette Launer, Steven Siegel and the attorneys at Mayer Brown  
13 LLP who have actively worked on Peregrine's behalf in this matter, no suit, litigation, arbitration  
14 or other proceeding is pending before or by any court, administrative agency or other  
15 governmental authority, or threatened against Peregrine or to which Peregrine is or would  
16 become a party, seeking to restrain or prohibit, or seeking damages or other relief in connection  
17 with, the execution and delivery of this Agreement or any of the Related Agreements, or the  
18 consummation of the transactions contemplated thereby, which might materially and adversely  
19 affect the use and operation of the Project as contemplated by this Agreement and the Related  
20 Agreements, or which might adversely affect in any way the validity, execution, delivery or  
21 performance of any of the Agreement or Related Agreements by Peregrine.

22 **20.2.8** Pursuant to the Franchise Agreement, and subject to the Closing, the  
23 satisfaction of certain conditions set forth in the Franchise Agreement, and compliance with the

1 covenants and terms of the Franchise Agreement, MLS has agreed to award to Peregrine an MLS  
2 franchise to begin play in Portland in the 2011 MLS season.

3           **20.2.9** Provided the Project Improvements are constructed in accordance with the  
4 100% Schematic Drawings, the 50% Design Development Documents and the 100% Design  
5 Development Documents, the Stadium will be suitable for the play of MLS games.

6           **20.2.10** As of Closing, Peregrine has the ability to pay the Peregrine Contribution  
7 and the Peregrine Costs and to make any other payments required of Peregrine at the times and in  
8 the manner required by and subject to the conditions of this Agreement.

9           **20.3 Survival of Representation and Warranties**

10           The representations and warranties set forth in this Section 20 shall survive the  
11 Closing.

12           **20.4 Disclaimers Regarding Physical Condition**

13           Except for any express representations, obligations and covenants of the City set  
14 forth in this Agreement, Peregrine accepts the Stadium in its "AS IS" condition. The City makes  
15 no warranties or representations as to the suitability of the soil or other physical conditions or any  
16 other conditions of the Project Site or the Stadium for the Project Improvements or for  
17 Peregrine's intended use of the Stadium, and Peregrine agrees that an affiliated entity, Shortstop  
18 LLC, has been operating the Stadium since June 1, 2007, and that it has not relied on any  
19 representations or warranties, if any, made by the City as to the environmental condition of the  
20 Project Site or the Stadium, the suitability of the soil conditions at the Project Site or any of the  
21 conditions of the Stadium. Peregrine agrees that the City will not be liable for any loss, cost or  
22 damage which may be caused or incurred by Peregrine by reason of any such soil, environmental  
23 or other physical conditions of the Project Site or the Stadium, except as provided in Section 8.



1 Nothing in this Section 20.4 shall be deemed an abrogation of the City's obligations under the  
2 Shortstop Operating Agreement.

### 3 **SECTION 21 COVENANTS AND CONDITIONS PRECEDENT TO CLOSING**

#### 4 **21.1 Related Agreements, Peregrine and City Covenants**

5 **21.1.1** On or before Closing, Peregrine, the City and the Guarantor shall execute,  
6 subject only to Closing, the following Related Agreements to which Peregrine, the City and the  
7 Guarantors are Parties:

8 **21.1.1.1** the Operating Agreement;

9 **21.1.1.2** the Exclusive Use and Guaranty Agreement;

10 **21.1.1.3** the Project Completion Guaranty;

11 **21.1.1.4** the Revenue Stream Guaranty;

12 **21.1.1.5** the Project Funding Agreement; and

13 **21.1.1.6** the License to Use Easement.

14 The foregoing Related Agreements shall be in final form as of the Council Meeting and, if not  
15 attached to this Agreement as an exhibit, each shall be separately included in the packet of  
16 materials provided to the City Council before the Council Meeting.

17 **21.1.2** Peregrine and the City shall use their respective Reasonable Efforts to  
18 cause each of the Conditions Precedent set forth in Section 21.2 to be satisfied prior to Closing.  
19 Each Party shall determine in good faith whether all conditions precedent have or have not been  
20 satisfied. Such determinations shall be subject to judicial resolution, but not Dispute Resolution.

#### 21 **21.2 Conditions Precedent to City's and Peregrine's Obligations**

22 Unless otherwise stated in this Section 21.2, the following conditions precedent to  
23 Closing shall be satisfied to the mutual satisfaction of the City and Peregrine, unless expressly

1 waived in writing by the City and Peregrine as a condition precedent to Closing (unless such  
2 Closing condition is stated to be for the benefit of a particular Party, in which case only such  
3 Party may waive such condition); *provided, however*, that no waiver by the City or Peregrine of a  
4 condition to Closing shall be deemed to constitute a waiver by the City or Peregrine of any  
5 performance obligation of the other Party in connection therewith unless the City or Peregrine  
6 shall have in writing expressly excused the other Party's performance obligation.

7 **21.2.1** The City, Peregrine and the applicable neighborhood associations and  
8 other third-party signatories shall have approved the Good Neighbor Agreement.

9 **21.2.2** The City shall have approved the Construction Mitigation Plan for the  
10 Phase One Project Improvements and the Community Outreach Plan.

11 **21.2.3** The City and Peregrine shall have agreed upon the Base Scope and the  
12 50% Design Development Documents, according to this Agreement.

13 **21.2.4** The City shall have approved the 100% Design Development Documents  
14 in accordance with Section 11.4.

15 **21.2.5** The City and Peregrine shall have each approved the Contractor's Phase  
16 One GMP in accordance with Section 11.7.

17 **21.2.6** The City and Peregrine shall have agreed upon the Closing Project Budget,  
18 each in their sole discretion.

19 **21.2.7** The MAC Easement shall have been fully executed and delivered to the  
20 City.

21 **21.2.8** Peregrine has provided the City with the performance and payment bond  
22 required under Section 12.5.1.

1           **21.2.9** The City and Peregrine have agreed upon the terms of the Contractor's  
2 Phase One GMP.

3           **21.2.10** Peregrine shall have provided the Pacific Coast League's  
4 acknowledgment as described in Section 5.2.

5           **21.2.11** MLS, SUM and Peregrine shall have executed the Franchise Agreement,  
6 and the City shall have determined in its reasonable discretion that the Franchise Agreement (a)  
7 will be binding on the parties thereto upon Closing under this Agreement and release from  
8 escrow of a portion of Peregrine's purchase price for the Team and (b) does not contain any  
9 material conditions precedent, other than the passage of time and Peregrine's payment of the full  
10 purchase price for the Team, to the grant of the Team to Peregrine in 2011.

11           **21.2.12** MLS shall have confirmed in writing to the City that it has reviewed and  
12 approved the 100% Schematic Drawings, the 50% Design Development Documents and the  
13 100% Design Development Documents and that, provided the Project Improvements are  
14 constructed in accordance with such Design Documents, the Stadium is approved as the home  
15 stadium of the Team.

16           **21.2.13** Peregrine shall have obtained from Shortstop LLC or shall have caused  
17 Shortstop LLC to deliver directly to the City an agreement signed by Shortstop LLC whereby  
18 Shortstop LLC (a) consents to the construction of the Project Improvements during Shortstop's  
19 operating term, (b) waives any and all Claims against the City and the City Indemnites arising  
20 from or related to acts of the City, the City Indemnites, Peregrine or the Peregrine Related  
21 Parties taken in accordance with this Agreement, and (c) agrees that in the event of any  
22 inconsistency between the terms of this Agreement and Shortstop's Operating Agreement, the  
23 terms of this Agreement shall govern.

1           **21.2.14** The City has removed any Objectionable Exceptions as required by  
2 Section 6.1.

3           **21.2.15** The City and Peregrine shall have been assured in writing by the  
4 Multnomah County Tax Assessor that either: the Stadium, operated by Peregrine under the terms  
5 of the Operating Agreement, will remain exempt from ad valorem taxation; or the Multnomah  
6 County Tax Assessor has determined that only limited portions of the Stadium are taxable and  
7 the balance is non-taxable and such determination is acceptable to the City in its sole discretion.

8           **21.2.16** Peregrine, the City and other necessary parties, as applicable, shall have  
9 approved and executed the Related Agreements described in Section 21.1, including their  
10 respective exhibits, and performed all acts necessary for all such Related Agreements to be  
11 effective and binding.

12           **21.2.17** Peregrine, the City and other necessary parties, as applicable, shall have  
13 approved and secured all conveyances, dedications and rights of way vacations for the  
14 development of the Project Improvements, if and as required by this Agreement.

15           **21.2.18** The zoning text change referred to in Section 9.2.2 shall have been  
16 adopted and shall have become effective, and Peregrine shall have obtained all special permits  
17 and other discretionary land use or other approvals which are necessary for the construction of  
18 the Project Improvements according to the Project Schedule as required by this Agreement or  
19 applicable Law, or if not, Peregrine and the City shall have determined that they can be promptly  
20 secured prior to the scheduled construction of those Project Improvements requiring such land  
21 use entitlements.

1           **21.2.19** Peregrine shall have funded the portion of the Peregrine Contribution into  
2 the Project Payment Account required by the Project Funding Agreement to be funded at  
3 Closing. This condition is for the sole benefit of the City.

4           **21.2.20** The City shall have funded that portion of the Public Contribution  
5 required by the Project Funding Agreement to be funded at Closing. This condition is for the  
6 sole benefit of Peregrine.

7           **21.2.21** Neither Peregrine, the City nor any Affiliate shall be in material default  
8 under this Agreement, and all warranties and representations of Peregrine and the City in this  
9 Agreement shall remain accurate, unchanged and in effect, as if made on the date of Closing.  
10 This condition is for the sole benefit of the non-defaulting Party.

11           **21.2.22** Peregrine shall have entered into the Architectural Services Agreement,  
12 the General Construction Contract, and all Retained Party Agreements listed on Exhibit 3.2.1.

13           **21.2.23** Peregrine shall have obtained a preliminary title report, dated not earlier  
14 than five (5) days prior to Closing, confirming that the City owns fee simple title to the Project  
15 Site, subject only to the Permitted Exceptions.

16           **21.2.24** All insurance required under Section 23 of this Agreement is in place as  
17 evidenced by insurance binders.

18           **21.2.25** There shall have occurred no major fire or other casualty to the Stadium.

19           **21.2.26** All other conditions precedent to Closing as expressly set forth in this  
20 Agreement shall have been satisfied.

21           **21.2.27** Peregrine and the City shall have delivered to the other a certificate  
22 signed by its respective Funding Representative, dated as of the Closing, certifying the  
23 fulfillment or the waiver of the conditions specified in this Section 21.2. Any conditions that are

1 waived shall be specifically set forth in the certificate. This condition is for the sole benefit of  
2 the recipient of each such certificate.

3 **21.2.28** Peregrine shall cause Jeannette Launer, and the City shall cause Ball  
4 Janik LLP, to each deliver legal opinions customary for the closing of the transactions set forth in  
5 this Agreement.

6 **21.3 Effect of Failure to Achieve Conditions to Closing**

7 **21.3.1** If a condition set forth in Section 21.2 requires the mutual agreement of  
8 Peregrine and the City, each in their sole discretion, and such mutual agreement is not achieved  
9 and Closing does not occur, then either Peregrine or the City may terminate this Agreement by  
10 written notice to the other and neither Party shall have a claim against the other for breach of this  
11 Agreement.

12 **21.3.2** If a condition set forth in Section 21.2 requires the approval or act of a  
13 third party and such approval or act does not occur and Closing does not occur, then either  
14 Peregrine or the City may terminate this Agreement by written notice to the other, and neither  
15 Party shall have a claim against the other for breach of this Agreement, so long as the Party that  
16 was responsible for satisfying that condition has used Reasonable Efforts to satisfy that  
17 condition, and if not, a claim for breach may be asserted.

18 **SECTION 22 CLOSING; POST CLOSING OBLIGATIONS**

19 **22.1 Closing Date**

20 The Closing shall occur upon satisfaction or waiver of all conditions precedent to  
21 Closing set forth in Section 21.2, not later than (3) Business Days after the effective date of the  
22 City Council ordinance approving this Agreement (the "Closing Date"), unless extended by  
23 mutual agreement of Peregrine and the City. If all conditions precedent to Closing are not

1 satisfied or waived by the Closing (or such earlier date as may be specified for such satisfaction),  
2 as extended under the foregoing sentence, the provisions of Section 21.3.1 or 21.3.2 and 27.2 of  
3 this Agreement shall apply.

#### 4 **22.2 Events of Closing**

5 The Closing shall occur at Ball Janik LLP, 101 SW Main Street, Suite 1100,  
6 Portland, Oregon, the offices of the City's outside legal counsel. At Closing, the following  
7 events shall occur in the following order:

8 **22.2.1** The City and Peregrine shall execute and deliver counterparts of all  
9 Related Agreements to which the City and Peregrine are the only parties;

10 **22.2.2** The City shall deliver to Peregrine its certificate confirming the City's  
11 representations and warranties set forth in Section 20.1;

12 **22.2.3** Peregrine shall deliver to the City its certificate confirming Peregrine's  
13 representations and warranties set forth in Section 20.2;

14 **22.2.4** The City shall deliver to Peregrine its certificate confirming that all  
15 conditions to Closing set forth in Section 21, except those which may only be waived by  
16 Peregrine, have been satisfied;

17 **22.2.5** Peregrine shall deliver to the City its certificate confirming that all  
18 conditions to Closing set forth in Section 21, except those which may only be waived by the City  
19 have been satisfied;

20 **22.2.6** Peregrine shall execute and deliver to the City UCC Financing Statements  
21 reasonably sufficient to perfect the security assignment of the Retained Party Contracts granted  
22 pursuant to Section 3.3.

1           **22.2.7** The City and Peregrine shall execute and deliver, and Peregrine shall  
2 record, that Memorandum of Operating Agreement attached as Exhibit 22.2.7; and

3           **22.2.8** The Parties shall execute and deliver the License to Use Easement.

4           **22.2.9** Each Party shall pay their respective amounts of cash required to be paid  
5 into the Project Payment Account as of Closing under the terms of the Project Funding  
6 Agreement.

7           **22.3   Previously Paid Project Costs**

8           Prior to the Closing Date, Peregrine will have paid certain Project Costs which are  
9 to be deemed part of the Peregrine Contribution. The Parties agree that Exhibit 22.3 is an  
10 accurate statement of the prior payments made as of December 31, 2009. The Parties agree to  
11 update Exhibit 22.3 as of the Closing Date to accurately reflect all prior payments of Project  
12 Costs by Peregrine prior to the Closing Date. On the Closing Date, the amount of the Peregrine  
13 Contribution to be deposited in cash into the Project Payment Account will be reduced by the  
14 amount previously paid by Peregrine as reflected on Exhibit 22.3. Any Dispute under this  
15 Section 22.3 shall be resolved by Dispute Resolution.

16           **22.4   Post Closing Obligations**

17           Unless otherwise stated in this Section 22.4, the following post-Closing  
18 obligations shall be satisfied to the mutual satisfaction of the City and Peregrine, unless expressly  
19 waived in writing by the City and Peregrine (unless such post-Closing obligation is stated to be  
20 for the benefit of a particular Party, in which case only such Party may waive such obligation).  
21 Each post-Closing obligation shall be fulfilled or waived within the time period set forth below  
22 or, if not stated below, the time period set forth in the Project Schedule.



1           **22.4.1** Peregrine shall have completed and submitted the Construction Mitigation  
2 Plan for the Phase Two Work to the City on or before July 9, 2010, and the City shall have  
3 approved such plan prior to Closing.

4           **22.4.2** The City, in accordance with this Agreement, shall have approved the 50%  
5 and 75% Construction Documents, which is anticipated to occur by April 30, 2010 and May 28,  
6 2010, respectively.

7           **22.4.3** Each of the City and Peregrine shall have approved the Contractor's Final  
8 GMP.

9           **22.4.4** Peregrine shall have prepared and submitted the Final Project Budget to  
10 the City by July 23, 2010, and the City shall have approved the Final Project Budget according to  
11 this Agreement.

12           **22.4.5** If MLS has not awarded the Team to Peregrine within two (2) Business  
13 Days of the Closing Date, then, on or before January 31, 2011, Peregrine shall have obtained  
14 from MLS the award of the Team. Within the foregoing time periods, as applicable, Peregrine  
15 shall deliver to the City written evidence that MLS has awarded the Team to Peregrine, which  
16 evidence shall be reasonably satisfactory to the City.

17           **22.5 Effect of Failure to Complete Post-Closing Obligations**

18           If the Parties must agree to satisfy a Post-Closing Obligation, and such mutual  
19 agreement is not achieved by the date applicable to such condition, then the disagreement shall  
20 be resolved by Dispute Resolution.

21           **SECTION 23 INSURANCE DURING CONSTRUCTION**

22           At least five (5) Business Days prior to the Closing, Peregrine shall deliver to the  
23 City certificates of insurance evidencing the following policies and coverages. In addition,

1 Peregrine will provide the City with the opportunity to review the insurance policies evidencing  
2 the required policies and coverages (including the declarations page, standard text and all  
3 amendments and endorsements) at a location in Portland, Oregon at any time during normal  
4 business hours provided the City has given Peregrine notice of its desire to review such policies  
5 at least two (2) Business Days in advance. From the Closing Date until Final Completion of all  
6 the Project Improvements, Peregrine shall maintain the following insurance in full force and  
7 effect and thereafter the insurance requirements of the Related Agreements shall govern and  
8 control. Peregrine shall determine whether some or all of the following coverages can be insured  
9 through a "wrap" policy. If a wrap policy is available, Peregrine shall pursue such a policy and  
10 shall deliver the policy to the City at least thirty (30) days prior to Closing for the City's review  
11 and approval, which approval includes whether the wrap policy is an owner controlled insurance  
12 program or a contractor controlled insurance program.

### 13 **23.1 Builder's Risk**

14 During construction of the Project Improvements, in addition to (but not in  
15 duplication of) the other insurance coverages required under this Section 23, a policy of Builder's  
16 Risk insurance acceptable to the City and Peregrine, including coverage against flood, earthquake  
17 and collapse, written on a completed value basis, in an amount not less than the projected total  
18 cost of construction of the Project Improvements as estimated by Peregrine and approved by the  
19 City not more than thirty (30) days prior to commencement of construction and as thereafter  
20 revised from time to time by the Peregrine and approved by the City during the course of such  
21 construction.

**23.2 Delayed Opening Insurance**

Peregrine's and the City's loss of use or business interruption insurance against perils typically contained in a Builder's Risk policy form including theft, flood and earthquake in an amount equal to not less than \$10 million covering delay in achieving Substantial Completion based on the above-described perils. The premium for such coverage shall be a Project Cost. Peregrine, at its election, need not maintain a separate policy of insurance as provided for in this Section 23.2, so long as Peregrine provides comparable insurance as a part of or an endorsement to the builder's risk insurance policy required by Section 23.1.

**23.3 Commercial General Liability**

Commercial General Liability insurance shall be maintained in full force and effect during the term of this Agreement with limits of liability not less that those set forth below, and including the following coverage for Bodily Injury, Property Damage, Products and Completed Operations, and Personal and Advertising Injury coverage with minimum limits of \$2,000,000 per occurrence and \$5,000,000 in the general aggregate. The Commercial General Liability insurance shall include the following specific coverage provisions and limits of liability:

**23.3.1** Bodily Injury and Property Damage coverage for premises and operations liability, including products and completed operations (including but without limitation, coverage for Peregrine's indemnification obligations pursuant to this Agreement).

**23.3.2** Personal and Advertising Injury liability limits of not less than \$2,000,000.

**23.3.3** Products and Completed Operations liability limits of not less than \$12,500,000 in the aggregate.

**23.3.4** The Commercial General Liability Policy shall name the City and Peregrine and their respective officers, agents and employees as additional insureds. In addition,

1 the policy shall be endorsed to include the following additional insured language on the ISO  
2 Form 2010 or CG 2037 form (2004 edition or its equivalent) of Additional Insured endorsement:  
3 "The City and its bureaus, officers, agents and employees, shall be named as additional insureds  
4 with respect to liability and defense of suits arising out of the activities performed by, or on  
5 behalf of the Contractor, including completed operations." The Commercial General Liability  
6 policy shall also have a per project aggregate endorsement.

7 **23.3.5** An Umbrella Policy shall be maintained in full force and effect with  
8 liability limits of not less than \$25,000,000.

9 **23.3.6** This Section 23.3 shall not limit in any way the extent to which Peregrine  
10 may be held responsible for the payment of damages to persons or property resulting from  
11 Peregrine's activities, the activities of its invitees, employees, licensees, agents or independent  
12 contractors, or the activities of any other person or persons for whom Peregrine otherwise is  
13 legally responsible.

#### 14 **23.4 Automobile Liability**

15 Peregrine shall also carry Auto Liability Coverage in an amount not less than  
16 \$1,000,000 per accident to protect against liability arising out of the use of any automobile  
17 (whether owned or not) including bodily injury and property damage.

#### 18 **23.5 Professional Liability**

19 The Architect shall maintain professional liability insurance covering wrongful  
20 acts, errors and/or omissions, including design errors, if applicable, for damage arising from  
21 professional services provided by the Architect as part of the Architectural Services Agreement  
22 in the amount of \$2,000,000 per occurrence and \$2,000,000 in the aggregate. The Professional

1 Liability coverage shall apply for not less than three (3) years following Substantial Completion  
2 and shall be on a primary basis.

### 3           **23.6 Insurance Premiums**

4           The premiums for all insurance required by Sections 23.1, 23.3 and 23.4 related to  
5 the Project Improvements are a Project Cost.

### 6           **23.7 Workers' Compensation**

7           Peregrine shall secure and maintain workers' compensation insurance complying  
8 with the statutory limits of the State of Oregon to insure all persons or entities employed by  
9 Peregrine and the costs of such insurance shall be a Peregrine Cost.

### 10          **23.8 Required Insurance Policy Provisions**

11           **23.8.1** All required insurance (excepting workers' compensation) shall be  
12 primary coverage and non-contributory and shall be for the benefit of Peregrine and the City, as  
13 additional insureds. The policies shall provide that the City's self insurance program will not be  
14 involved in the payment of any claims covered by a policy.

15           **23.8.2** All required insurance shall be obtained from a financially sound  
16 insurance company, rated not less than A+ in Best's Rating Guide, authorized to do business in  
17 the State of Oregon.

18           **23.8.3** All required insurance shall provide that the waiver of recovery  
19 (subrogation) provided in Section 23.9 shall not invalidate or have any adverse effect on the  
20 liability of the insurer.

21           **23.8.4** All insurance (other than workers' compensation) shall provide coverage  
22 for the acts and activities (in connection with the Project Improvements) of the City and  
23 Peregrine, and their respective officers, agents and employees. Such insurance shall also provide

1 for and protect the City against attorneys' fees and other costs in defending claims for alleged  
2 loss.

3           **23.8.5** All required insurance shall provide that such policies or certificates shall  
4 not be canceled without at least ten (10) Business Days prior written notice to the City for  
5 cancellation due to non-payment and at least sixty (60) days prior written notice to the City for  
6 cancellation due to other reasons.

7           **23.8.6** Prior to the commencement of construction, Peregrine shall provide the  
8 City with certificates of insurance from the companies issuing such policies that insurance  
9 coverage provided by such policies is in place and thereafter shall provide the City with an  
10 opportunity to review such policies as set forth above. At least thirty (30) days prior to the  
11 expiration of any such policy, Peregrine shall provide a copy of the renewal certificate to the  
12 City, and promptly thereafter provide the City with copies of such renewal policies.

13           **23.8.7** Peregrine shall use Reasonable Efforts to coordinate the insurance policies  
14 required to be maintained by Peregrine and the Contractor pursuant to this Agreement so as to  
15 avoid duplication of coverages which would result in increased premiums charged or allocated as  
16 Project Costs pursuant to Section 23.6.

17           **23.9 Waiver of Recovery**

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

1 Construction Contract to contain a waiver of subrogation in favor of Peregrine and the City that  
2 is substantively equivalent to the foregoing.

### 3 **23.10 Failure to Maintain Insurance**

4 If Peregrine fails or refuses to procure or maintain the insurance required by this  
5 Section 23, after five (5) days prior notice to Peregrine, the City shall have the right, at its  
6 election, to procure and maintain such insurance, in which event, any reasonable premium paid  
7 by the City, plus interest at the rate of Default Interest computed from the date such premium is  
8 paid by the City, shall be due and payable by Peregrine to the City on the first day of the month  
9 following the date on which such premium was paid. To the extent that the premium reimbursed  
10 to the City by Peregrine is included in the Project Budget, such reimbursement shall be a Project  
11 Cost, and any premium amount not in the Project Budget and any accrued interest shall be a  
12 Peregrine Cost. The City shall give prompt notice to Peregrine of the payment of any premium  
13 stating the amount paid.

### 14 **23.11 Proceeds Disposition**

15 **23.11.1** Unless otherwise agreed by Peregrine and City in writing, insurance  
16 proceeds with respect to loss or damage to the Project Improvements, under the provisions of a  
17 policy of insurance, shall be used for the repair and restoration of the Project Improvements in  
18 accordance with the 100% Construction Documents approved by the City, pursuant to Section  
19 24. To the extent that such proceeds exceed the costs of such repair or restoration, such excess  
20 shall be distributed as provided in Section 24.3. If the insurance proceeds are less than the costs  
21 of such repair and restoration, the provisions of Section 24 shall control.

1           **23.11.2** Insurance proceeds from the policy referred to in Section 23.2 shall be  
2 used first to pay all debt service payments on the City Debt, less payments to the City pursuant to  
3 Section 13.4, during the period of delay covered by such policy.

4           **23.11.3** Insurance proceeds from the policy referred to in Section 23.3 shall be  
5 used to indemnify the Parties from third party claims.

6           **23.12 Additional Coverages**

7           **23.12.1** Peregrine shall cause the Contractor to name all subcontractors as  
8 additional insureds under its policies or, in the alternative, to cause each subcontractor to  
9 maintain separate insurance as determined by the Contractor, provided that each subcontractor's  
10 limits of liability shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the  
11 aggregate.

12           **23.12.2** If Peregrine obtains insurance policies in addition to the policies referred  
13 to above or coverages in an amount referred to above, such policies shall provide that such  
14 additional policies or coverages will not diminish the coverage of the City required by this  
15 Section 23. Peregrine shall provide the City with a copy of such additional policy or coverage  
16 confirming the above.

17           **23.13 Changes in Insurance Requirements**

18           Any modification or variation from the insurance requirements in this Agreement  
19 shall be made by the City Risk Management Office or by the CAO, whose decision shall be final.  
20 Such action will not require a formal Agreement amendment, but may be made by administrative  
21 action.



**SECTION 24 DAMAGE OR DESTRUCTION DURING CONSTRUCTION****24.1 Adequately Insured Damage**

Subject to the provisions of Sections 24.2 and 24.3, if the Project Improvements are damaged or otherwise destroyed and such damage or destruction was caused by a casualty covered by insurance and insurance proceeds are paid under an insurance policy maintained by Peregrine as required by Section 23, such insurance proceeds ("Insurance Proceeds") shall be delivered to the City and held by the City in a separate account ("Insurance Proceeds Account"). Restoration shall be in accordance with the 100% Construction Documents approved by the City and in compliance with then applicable governmental requirements. All such restoration shall be performed by Peregrine, and the provisions for approval of the 100% Construction Documents contained in Section 11 shall apply to such restoration. The City shall disburse the funds from the Insurance Proceeds Account, as necessary and in conformance with the provisions of Section 18.2 so that the Project Improvements can be restored in a timely manner taking into account the result of any delays created by the damage or destruction.

**24.2 Insurance Deficiency and Termination**

If the Project Improvements are damaged or otherwise destroyed by a casualty not covered under the insurance required by Section 23 and, accordingly, there are no Insurance Proceeds, or, if so covered, the Insurance Proceeds are insufficient to pay the costs of restoration of the Project Improvements, then the City and Peregrine shall reasonably determine the amount of the Insurance Deficiency within ninety (90) days after the date such damage or destruction occurred (the "Destruction Date"). If the Insurance Deficiency does not exceed the then remaining Project Contingency, the Parties shall proceed with restoration as provided above and the Project Contingency will be used to complete the restoration. If the Insurance Deficiency

1 exceeds the then remaining Project Contingency, then the excess shall be the "Excess Amount."  
2 If there is an Excess Amount then, within thirty (30) days, the City and Peregrine shall each  
3 determine in their respective sole discretion, whether or not the City will fund the City's Share of  
4 the Excess Amount and whether or not Peregrine will fund Peregrine's Share of the Excess  
5 Amount. If both Parties give written notice to the other that each agrees to fund its respective  
6 Share of the Excess Amount, then this Agreement shall remain in full force and effect, Peregrine  
7 shall proceed under Section 24.1 to restore and complete the Project Improvements, and each  
8 Party shall contribute its respective Share of the Excess Amount when and as needed to complete  
9 the Project Improvements. If either Party elects not to agree to fund its respective Share of the  
10 Excess Amount, then this Agreement shall terminate and the Insurance Proceeds shall be paid in  
11 accordance with Section 24.3, unless either party, within ten (10) Business Days after notice of  
12 such nonelection by the other party, itself elects, in its sole discretion, to fund the other party's  
13 Share of the Excess Amount. If Peregrine elects to fund the City's Share of the Excess Amount,  
14 that Share will be deemed a Cost-Overrun. Notwithstanding the foregoing, if there are no  
15 Insurance Proceeds or Insurance Proceeds exist but are insufficient to cover losses and such lack  
16 or insufficiency of Insurance Proceeds is due to Peregrine's failure to obtain and maintain  
17 insurance in accordance with Section 23, then the Excess Amount shall be deemed a Cost  
18 Overrun.

### 19 **24.3 Disposition on Termination**

20 In the event this Agreement is terminated pursuant to Section 24.2, any Insurance  
21 Proceeds or other funds deposited in the Insurance Proceeds Account shall be distributed as  
22 follows: (a) first, to the City in the amount of the sums guaranteed under the Revenue Stream  
23 Guaranty; (b) next, to Peregrine in the Unamortized Amount (as defined in the Operating

1 Agreement) of the sum of (i) the Peregrine Contribution and (ii) the Prepaid Payments; and (c)  
2 then, to the City. If the Parties are unable to agree on the above allocation, then the matter shall  
3 be resolved through Dispute Resolution.

#### 4 **24.4 Applicability of Provisions**

5 The provisions of this Section 24 shall be applicable to the Project Improvements  
6 until they are all Substantially Complete and thereafter the provisions regarding damage or  
7 destruction contained in the Operating Agreement shall control.

### 8 **SECTION 25 EMINENT DOMAIN DURING CONSTRUCTION**

#### 9 **25.1 Substantial Completion**

10 Prior to Substantial Completion of the Project Improvements, if all or a  
11 Substantial Portion of the Project Improvements are taken by right of eminent domain, with or  
12 without litigation, or are transferred in lieu of or under threat of such action (any such action to  
13 be referred to herein as a "Taking"), Peregrine and the City, respectively, shall have the right, in  
14 their respective sole discretion, exercisable at any time within ninety (90) days after the official  
15 written notice of the Taking and its scope is issued by the condemnor and received by Peregrine  
16 and the City (the "Taking Date"), to terminate this Agreement, in which event, the Parties shall  
17 be released from all future liability under this Agreement (such release to be effective upon the  
18 termination of this Agreement pursuant to this Section 25.1); provided, however, that no Party  
19 shall be released from any liability hereunder that has accrued on or before such termination. The  
20 payment or other award from the condemnor attributable to the value of the Project  
21 Improvements or the Project Site ("Award") shall be deposited into the Condemnation Account  
22 to be established by the City. As used in this Section 25.1, the term "Substantial Portion" means  
23 the Taking of any portion of the Stadium that would substantially interfere with the construction

1 or operation of the Project, as reasonably determined by Peregrine and reasonably approved by  
2 the City.

### 3 **25.2 Partial**

4 **25.2.1** If less than a Substantial Portion of the Project Improvements is the  
5 subject of a Taking, or if a Substantial Portion or more of the Project Improvements is the subject  
6 of a Taking but neither Peregrine nor the City terminates this Agreement as provided in Section  
7 25.1 and the Award is sufficient to restore the remaining Project Improvements to a condition  
8 that makes them functionally sufficient for the purpose for which they were constructed, then  
9 Peregrine shall restore the remainder of the Project Improvements not affected by the Taking to a  
10 condition that makes them function in substantially the same manner and character as they were  
11 before the Taking Date, and this Agreement shall continue in effect. Such restoration shall be in  
12 accordance with new plans prepared and approved by the City in the same manner as the 100%  
13 Design Development Documents and the 100% Construction Documents as provided for in  
14 Section 11. Peregrine's obligation to restore the Project Improvements is subject to the City  
15 disbursing the moneys from the Condemnation Account in the same manner as provided for in  
16 Section 18.2 for the original construction of the Project Improvements.

17 **25.2.2** If the costs of restoring the Project Improvements to the condition referred  
18 to in Section 25.2.1 exceed the amount of the Award (the "Condemnation Deficiency"), then the  
19 provisions of Section 24.2 shall apply to the Condemnation Deficiency as though the  
20 Condemnation Deficiency was an Insurance Deficiency.

### 21 **25.3 Distribution in the Event of Substantial Taking**

22 **25.3.1** In the event this Agreement is terminated on account of a Substantial  
23 Taking pursuant to Section 25.1, then the condemnation award shall be allocated as follows: (a)

1 first, to the City in the amount of the sums guaranteed under the Revenue Stream Guaranty; (b)  
2 next, to Peregrine in the Unamortized Amount (as defined in the Operating Agreement) of the  
3 sum of (i) the Peregrine Contribution and (ii) the Prepaid Payments; and (c) then, to the City. If  
4 the Parties are unable to agree on the above allocation, or the court hearing the Taking does not  
5 establish the allocation, then the matter shall be resolved through Dispute Resolution.

#### 6 **25.4 Applicability of Provisions**

7 The provisions of this Section 25 shall be applicable to the Project Improvements  
8 until they are all Substantially Complete and thereafter the provisions regarding condemnation as  
9 contained in the Operating Agreement shall control.

### 10 **SECTION 26 DEFAULT; REMEDIES**

#### 11 **26.1 Default**

12 **26.1.1** The default or failure of a Party (not otherwise excused) to perform a  
13 material obligation imposed on that Party under this Agreement shall be an Event of Default on  
14 the part of such Party if the following conditions are met: (a) the non-defaulting Party has served  
15 a written notice of default or demand for performance on the defaulting Party specifying the  
16 nature of the alleged default and the actions required to cure the alleged default; and (b) (i) if the  
17 matter is subject to Dispute Resolution, the Dispute Resolution has been concluded and has  
18 determined that a default does exist on the part of the defaulting Party, and the defaulting Party  
19 has not cured or diligently commenced the curing of the default within a reasonable time  
20 following the determination of Dispute Resolution, or (ii) if the matter has not been referred for  
21 resolution under the Dispute Resolution, the defaulting Party has not cured or diligently  
22 commenced the curing of the default within a reasonable time following the receipt of notice of  
23 default or demand for performance under (a) above, and the defaulting Party has not diligently

1 prosecuted such cure to completion. For purposes of this Section 26, a reasonable time shall be:  
2 (w) five (5) Business Days in the case of a failure to pay a sum of money; (x) ten (10) Business  
3 Days in the case of a failure to give an approval or execute a document; (y) thirty (30) Business  
4 Days in the case of obligations that can be performed within such time; and (z) such time as is  
5 reasonably appropriate under the circumstances in the case of obligations that cannot be  
6 performed within thirty (30) Business Days, provided that the defaulting Party has commenced to  
7 cure said default as early as reasonably possible within such thirty (30) Business-Day period and  
8 has diligently prosecuted such cure to completion; and provided further that in the event of  
9 Peregrine's failure to achieve the condition set forth in Section 22.4.5, such time period shall not  
10 be longer than one (1) year from the Substantial Completion Date.

11 **26.1.2** In the case of Peregrine's obligation under this Agreement to comply with  
12 the terms of the Good Neighbor Agreement, a Violation, as defined in the Good Neighbor  
13 Agreement, for which Peregrine has paid the levied fine or performed whatever is required by the  
14 Code Hearings Officer, shall not constitute an Event of Default, but such Violation will  
15 constitute an Event of Default if Peregrine fails to pay the fine or perform whatever is required by  
16 the Code Hearings Officer.

17 **26.2 Remedies**

18 **26.2.1** Subject to the limitations on the City's liability set forth in Section 26.3,  
19 and the limitations on termination as provided in Section 27.2, the City and Peregrine shall have  
20 all rights available to them at law or in equity arising out of a breach or default of the other Party  
21 under this Agreement (including the breach of any representation or warranty by the other Party),  
22 including but not limited to the right to specific performance, the right to enforce a Dispute  
23 Resolution determination under Section 19, and the rights to pursue payment of any amounts

1 owed or claimed to be owed by a Party under this Agreement and the right to seek such recovery,  
2 damages or other relief, as may be available at law or in equity, except as may be explicitly  
3 limited by this Agreement, suffered by a Party and caused by a material breach or default by the  
4 other Party or by the failure of the other Party to follow a determination rendered pursuant to  
5 Dispute Resolution.

6 **26.2.2** If a Party should fail to pay its share of Project Costs or any other money  
7 payable hereunder by such Party, when due under this Agreement, the delinquent amount shall  
8 bear Economic Interest or Default Interest pursuant to Section 31.9 on the amounts that should  
9 have been paid. Each Party acknowledges that its failure to pay its Contribution or any other  
10 money that that Party is obligated to pay under this Agreement shall not relieve that Party from  
11 liability for damages to the other Party caused by a Party's failure to pay such amounts when due.

12 **26.2.3** Notwithstanding anything to the contrary set forth in this Agreement, upon  
13 an Event of Default due to a failure of the condition set forth in Section 22.4.5, the City's sole  
14 and exclusive remedies shall be as follows:

15 **26.2.3.1** Peregrine shall pay to the City an amount equal to the City Debt,  
16 including interest on the Interim Financing and the costs associated with issuance of the Stadium  
17 Bonds, if any. Payment in full by Peregrine of the amounts required by this Section 26.2.3.1  
18 shall relieve Peregrine of its obligation to pay amounts owing under Sections 6.2 and 6.3 of the  
19 Operating Agreement.

20 **26.2.3.2** Not later than one hundred eighty (180) days after the Event of  
21 Default due to a failure of the condition set forth in Section 22.4.5, the City may terminate this  
22 Agreement by delivering written notice to Peregrine of such termination. Upon such termination,  
23 the City, through the grant of an entry permit, will allow Peregrine to remain on the Project Site

1 for the sole purpose of completing the Project Improvements, provided that Peregrine has agreed  
2 in writing to complete the Project Improvements. In such event, the provisions of this  
3 Agreement related to Substantial Completion and Final Completion shall remain in full force and  
4 effect.

5 **26.2.3.3** Nothing in this Section 26.2.3 shall be deemed to release the  
6 Guarantors from their obligations under the Project Completion Guaranty. The provisions of this  
7 Section 26.2.3 shall survive the termination of this Agreement.

### 8 **26.3 Limitations on Liability of the Parties**

9 **26.3.1** The City shall not be liable for damages to Peregrine or any other person  
10 or entity by reason of delays in the commencement, prosecution and completion of design and  
11 construction of the Project Improvements arising from the City's exercise of its regulatory  
12 authority, unless the City would have been liable in the absence of this Agreement.

13 **26.3.2** Subject to Section 26.3.1, the provisions of this Section 26.3 shall not  
14 limit actions by either Party, following any Dispute Resolution pursuant to this Agreement, to:  
15 (a) enforce payments of money owed by the other Party or otherwise required to be expended by  
16 the other under the provisions of this Agreement; (b) to enforce express indemnification  
17 provisions in this Agreement; or (c) to enforce other monetary or non-monetary obligations of the  
18 other.

19 **26.3.3** No member, officer, agent, consultant or employee of the City shall be  
20 personally liable to Peregrine, its members or Affiliates, in the event of any default or breach by  
21 City or for any amounts owed to Peregrine, its members or Affiliates, or on any obligation under  
22 the terms of this Agreement. Other than the obligations under the Revenue Stream Guaranty or  
23 the Project Completion Guaranty, no member or manager of Peregrine shall be personally liable



1 to the City in the event of any default or breach by Peregrine or for any amounts owed to the City  
2 or on any obligation under the terms of this Agreement.

3 **26.3.4** Notwithstanding anything in this Agreement or any Related Agreement to  
4 the contrary, the City and Peregrine waive any and all claims against the other Party for  
5 consequential damages arising out of or relating to this Agreement or the Party's default,  
6 performance or nonperformance hereof, including without limitation damages for indirect  
7 expenses, losses of use, income, profit, financing, business reputation, or loss of services of  
8 persons.

9 **26.4 Indemnification**

10 **26.4.1 By Peregrine to the City.** Subject to any applicable limitations on  
11 liability stated elsewhere in the Agreement or at Law, Peregrine shall hold harmless, indemnify  
12 and defend the City and its officers, employees and agents (collectively, the "City Indemnitees")  
13 from and against all claims, demands, penalties, and causes of action of any kind or character  
14 relating to or arising from this Agreement (including the cost of defense thereof, including  
15 attorney fees) in favor of any person on account of personal injury, death, damage to property, or  
16 violation of law, which arises out of, or results from, the acts or omissions of Peregrine, its  
17 officers, employees, agents, affiliates, consultants, contractors or subcontractors.

18 **26.4.2 By the City to Peregrine.** Subject to any applicable limitations on liability  
19 stated elsewhere in the Agreement or at Law, including the Oregon Constitution and the Oregon  
20 Tort Claims Act, City shall hold harmless, indemnify and defend Peregrine and its officers,  
21 employees and agents from and against all claims, demands, penalties, and causes of action of  
22 any kind or character relating to or arising from this Agreement (including the cost of defense  
23 thereof, including attorney fees) in favor of any person on account of personal injury, death,

1 damage to property, or violation of law, which arises out of, or results from, the acts or omissions  
2 of the City, its officers, employees, or agents.

### 3 26.5 Unenforceability

4 In the event that a court having jurisdiction over the Parties holds that this  
5 Agreement or any of the Related Agreements is invalid or unenforceable in whole or in part for  
6 any reason, including without limitation by reason of application of any provision of the City  
7 Charter, then the City and Peregrine covenant to each other to use Reasonable Efforts to mitigate  
8 their respective damages by attempting to put the Parties back into the same position that they  
9 would have been but for the holding of invalidity or unenforceability. To this end, if this  
10 Agreement or any of the Related Agreements is held to be invalid or unenforceable by reason of  
11 application of the City Charter, then the City shall have the option to require Peregrine to enter  
12 into an agreement or series of agreements on terms which are identical in effect to the agreement  
13 or agreements which were held to be invalid or unenforceable, which would give the Parties the  
14 full benefit of their bargain as if such Agreement and Related Agreements were totally valid and  
15 enforceable in every respect. Notwithstanding the foregoing, if the City does not exercise its  
16 option in a manner which gives to Peregrine the full benefit of its bargain, Peregrine shall retain  
17 all rights and remedies otherwise available at law, equity or pursuant to this Agreement and all of  
18 the Related Agreements.

## 19 SECTION 27 TERM AND TERMINATION

### 20 27.1 Term

21 27.1.1 The term of this Agreement shall commence as of the Effective Date and  
22 shall terminate pursuant to the provisions of Section 27.2 (the "Term").

1                   **27.1.2** The Parties acknowledge that, prior to the Effective Date, the  
2                   Parties have performed certain of their obligations contemplated by this Agreement.  
3                   Each Party acknowledges that to its knowledge, there are no existing defaults by the  
4                   other Party with respect to those obligations performed by the Parties prior to the  
5                   Effective Date.

6                   **27.2 Termination**

7                   **27.2.1** This Agreement shall terminate only upon the occurrence of any of the  
8                   following circumstances. Except as provided for in this Section 27.2, there is no other right to  
9                   terminate this Agreement.

10                   **27.2.1.1** Upon written agreement of both Parties;

11                   **27.2.1.2** If the conditions precedent to Closing are not satisfied or waived  
12                   within the time required by Section 21.2;

13                   **27.2.1.3** At the election of the non-defaulting Party, upon occurrence of  
14                   an Event of Default and the defaulting Party's failure to cure the Event of Default as required by  
15                   Section 26.1.1;

16                   **27.2.1.4** Under the limited circumstances set forth in Sections 20.3  
17                   relating to a change in circumstances affecting representations and warranties, Section 24 relating  
18                   to damage or destruction, and Section 25 relating to eminent domain;

19                   **27.2.1.5** In the event Peregrine files a voluntary petition for bankruptcy,  
20                   Peregrine is the subject of an involuntary petition for bankruptcy which is not dismissed within  
21                   sixty (60) days of when filed, or Peregrine makes a general assignment for the benefit of its  
22                   creditors; or

1                   **27.2.1.6** In the event the City files a voluntary petition for bankruptcy, the  
2 City is the subject of an involuntary petition for bankruptcy which is not dismissed within sixty  
3 (60) days of when filed, or the City makes a general assignment for the benefit of its creditors.

4                   **27.2.2** Notwithstanding the termination of this Agreement, pursuant to Section  
5 27.2, the Parties' rights and obligations arising prior to termination and reimbursements or  
6 payments (including payments of Insurance Proceeds) from the other Party shall survive and  
7 remain in full force and effect to the extent necessary to enforce the terms thereof.

### 8                   **27.3 City Right to Suspend and Carry out Work**

9                   **27.3.1** If the Contractor fails to correct work which is not in accordance with the  
10 requirements of this Agreement within a reasonable time or fails to carry out work in accordance  
11 with this Agreement and the applicable Retained Party Contract, the City may direct Peregrine to  
12 order the Contractor to stop the work, or any portion thereof, until the cause for such order has  
13 been eliminated.

14                   **27.3.2** If Peregrine defaults or neglects to carry out the work in accordance with  
15 this Agreement, and fails within fourteen (14) days after receipt of written notice from the City to  
16 commence and continue correction of such default or neglect with diligence and promptness, the  
17 City may, without prejudice to other remedies, commence and continue to carry out the work and  
18 deduct for payment then due to Peregrine the costs thereof in excess of the City Contribution,  
19 including compensation for additional services and expenses made necessary by such default,  
20 neglect or failure. If payments then or thereafter due exceed the Closing Project Budget as a  
21 result thereof, Peregrine shall pay the difference to the Project Payment Account as a Peregrine  
22 Cost. The right of the City to take over the work pursuant to this Section shall not give rise to  
23 any duty on the part of the City to exercise this right. This right shall be in addition to, and not in

1 restriction of, the City's other rights under this Agreement, and shall not excuse Peregrine or the  
2 Contractor from failure of performance of this Agreement.

### 3 **27.4 Termination Prior to Closing**

4 In the event this Agreement is terminated prior to the Closing, pursuant to any  
5 provision of this Agreement authorizing a Party to terminate prior to Closing (except for a  
6 termination on account of a breach), then the City and Peregrine shall owe no further obligations  
7 to each other under the terms of this Agreement, and the City and Peregrine shall have no  
8 liability to each other under the terms of this Agreement, except for claims already asserted in  
9 writing under the Predevelopment Agreement or this Agreement, which claims shall survive such  
10 a termination. The City and Peregrine shall both own and be entitled to possess and use all  
11 Design Documents which were made available to the City or Peregrine prior to termination, in  
12 accordance with any terms and restrictions set forth in the Retained Party Contract under which  
13 the relevant Design Documents were created. The City shall own and be entitled to possess and  
14 use all of the work product of the Contractor which was made available to the City or Peregrine  
15 prior to termination or which is otherwise subject to Peregrine's control, and Peregrine shall  
16 promptly deliver such work product, reasonably organized, to the City.

### 17 **SECTION 28 NAMING RIGHTS**

18 Except as specified in Section 12.10.1, Naming Rights and Advertising at, on and  
19 within the Stadium and on signage located at the Project Site shall be governed by the terms of  
20 the Operating Agreement.

1     **SECTION 29 CITY'S POLICE POWER; REGULATORY AUTHORITY**

2             **29.1    Police Power.**

3             The Parties recognize that the City must retain its regulatory powers and that the  
4     City's regulatory bodies, in carrying out their responsibilities, should do so independently  
5     without influence by other City official and employees. The City agrees that such other City  
6     officials and employees, during the term of this Agreement, shall not seek to influence the City's  
7     regulatory bodies in a manner that would otherwise deny to Peregrine the benefits of the City's  
8     covenants and obligations under this Agreement or would otherwise allow the City to accomplish  
9     a result that would not be permitted under the terms and conditions of this Agreement. This  
10    Section 29 shall not restrict the City's staff from performing its usual regulatory review,  
11    comment and advisory functions. Nothing in this Agreement shall be construed to limit or affect  
12    the City's exercise of its police powers.

13            **29.2    Regulatory Authority**

14            By entering into this Agreement and the Related Agreements, the City is  
15    specifically not obligating itself or any other agency with respect to any discretionary or  
16    regulatory action relating to development or operation of the Project Improvements, including,  
17    but not limited to, rezoning, variances, environmental clearances, regulatory plan reviews, code  
18    compliance or any other governmental agency approvals or regulatory actions which are or may  
19    be required or authorized. When reasonably feasible to do so, the City will work in good faith to  
20    facilitate the cooperation of, and coordination among, the City's bureaus with respect to the  
21    Project.

1    **SECTION 30 COMPREHENSIVE TRANSPORTATION MANAGEMENT PLAN**

2           Peregrine shall retain a transportation consultant to measure and evaluate current  
3 traffic and transportation-related conditions near the Stadium, as they currently exist, to  
4 extrapolate potential future impacts based on Peregrine's projected Event mix at the newly  
5 renovated Stadium, and to recommend measures to mitigate the impacts of additional traffic from  
6 events at the Stadium. This information shall be made available to the City at the same time it is  
7 submitted to Peregrine. The cost of preparing the update to the CTMP is a Peregrine Cost.

8    **SECTION 31 GENERAL PROVISIONS**

9           **31.1 Conflict of Interests**

10           No member, official, or employee of the City shall have any personal economic  
11 interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee  
12 participate in any decision relating to this Agreement which affects his or her personal interests  
13 or the economic interests of any corporation, partnership, or association in which he or she is,  
14 directly or indirectly, interested. For purposes of this Section 31.1, merely being a patron or  
15 sponsor of Events held at the Stadium or the Project shall be deemed to not constitute a personal  
16 interest.

17           **31.2 Discrimination and Compliance With Law**

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

**31.3 Notice**

A notice or communication under this Agreement by a Party to another Party shall be sufficiently given or delivered by: (a) personal delivery; (b) sending a confirmed facsimile copy (either by automatic electronic confirmation or by declaration of the sender) directed to the fax number of the Party set forth below; (c) registered or certified mail, postage prepaid, return receipt requested; or (d) delivery service or "overnight delivery" service that provides a written confirmation of delivery, each addressed to a Party as follows:

If to the City:

City of Portland  
1221 S.W. Fourth Avenue, 1<sup>st</sup> Floor  
Portland, Oregon 97205  
Attn: Chief Administrative Officer  
Fax No.: 503-823-4571  
Confirmation No.: 503-823-5288

with copies to:

Office of the City Attorney  
City of Portland, Oregon  
1221 S.W. Fourth Avenue, 4<sup>th</sup> Floor  
Portland, Oregon 97204  
Attn: City Attorney  
Fax No.: 503-823-3089  
Confirmation No.: 503-823-4047

and to:

Office of Management and Finance  
City of Portland, Oregon  
1120 S.W. Fifth Avenue, 12<sup>th</sup> Floor  
Portland, Oregon 97204  
Attn: Chief Administrative Officer  
Fax No.: 503-823-5384  
Confirmation No.: 503-823-5288

and to:



1 Ball Janik LLP  
2 101 SW Main Street, Suite 1100  
3 Portland, Oregon 97204  
4 Attn: Steve Janik/Dina Alexander  
5 Fax No.: 503-295-1058  
6 Confirmation No.: 503-228-2525

7 If to Peregrine:

8 Peregrine Sports LLC  
9 1844 S.W. Morrison  
10 Portland, OR 97205  
11 Attn: Merritt Paulson  
12 Fax No.: 503-553-5405  
13 Confirmation No.: 503-553-5401

14 with a copy to:

15 Jeannette Launer, Attorney  
16 5216 S.W. Burton Dr.  
17 Portland, OR 97221  
18 Fax No.: 503-221-7045  
19 Confirmation No.: 503-502-1030  
20

21 Each party may by notice to the other Party, specify a different address or a different fax or  
22 confirmation number for subsequent notice purposes. Notices may be sent by counsel for a  
23 Party. Notice shall be deemed effective on the earlier of actual delivery or refusal of a Party to  
24 accept delivery; provided that notices delivered by facsimile shall not be deemed effective unless  
25 simultaneously transmitted by another means allowed under this Section 31.3. For a notice to be  
26 effective, the copied persons must also be given notice.

#### 27 **31.4 Nonmerger**

28 None of the provisions of this Agreement are intended to or shall be merged by  
29 reason of the Operating Agreement between the City and Peregrine, or between any successors in  
30 interest of any real property comprising the Project Site. The Operating Agreement shall not be

1 deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed  
2 made pursuant to this Agreement.

### 3 **31.5 Headings**

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

### 7 **31.6 Counterparts**

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

### 14 **31.7 Waivers**

15 No waiver by any Party with respect to the performance of any obligation of the  
16 other Party or any condition of a Party's own obligation under this Agreement shall be  
17 considered a waiver of any rights of the other Party or condition of such other Party's obligation  
18 beyond those expressly waived or a waiver in any respect of any other rights of the Party making  
19 the waiver or any other obligations of the Party. No waiver by any Party of any provision of this  
20 Agreement or any breach thereof, shall be of any force and effect unless in writing and signed by  
21 the waiving Party; and no such waiver shall be construed to be a continuing waiver.

**31.8 Interest**

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

**31.9 Choice of Law**

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

**31.10 Time of Essence**

Time is of the essence in this Agreement.

**31.11 Calculation of Time**

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

1           **31.12 Construction**

2           In construing this Agreement, if the context so requires, the singular pronoun shall  
3           be taken to mean and include the plural, the masculine, the feminine, and the neuter. The term  
4           “including” and variations thereof shall mean including without limitation.

5           **31.13 Severability**

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

9           **31.14 Entire Agreement**

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

12          **31.15 Modifications**

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

15          **31.16 Assignment; Successors and Assigns**

16          Peregrine shall not assign or transfer this Agreement or any interest in this  
17          Agreement or encumber or grant a security interest in this Agreement or in any interest under this  
18          Agreement, nor shall there be any changes in the manager of Peregrine (other than those resulting  
19          from death or incapacity), without the express written approval of the City, which approval shall  
20          be in the City’s sole and absolute discretion. Following Substantial Completion of all Project  
21          Improvements, the applicable provisions of the Related Agreements shall govern assignments  
22          and transfers of interest. Subject to the terms of this Agreement, the benefits conferred by this  
23          Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the

1 successors and assigns of the Parties, and the obligations of the Parties and the remedies for the  
2 breach thereof, shall further be covenants and conditions running with the Project Site.

### 3 **31.17 Access to and Confidentiality of Documents**

4 **31.17.1 Inspection of Records.** Each Party agrees that, upon the reasonable prior  
5 notice from the other, it will make available to the requesting Party its records, reports and  
6 information pertaining to the Project for review, but not copying (unless agreed upon by the non-  
7 requesting Party), so as to inform the requesting Party and to enable the requesting Party to  
8 determine the other Party's compliance with the terms of this Agreement. Notwithstanding the  
9 foregoing, the City's obligation to make records, reports and information available shall be  
10 subject to ORS Chapter 192.

11 **31.17.2 Confidentiality.** Each Party agrees to keep as confidential any document  
12 or information that meets the requirements of ORS 192.502(4) and is identified by the originating  
13 Party as being confidential, by means of marking the document or information as being  
14 confidential. A Party agrees to only communicate confidential information submitted by the  
15 other Party to its legal counsel and other consultants or as required by court order or by the  
16 District Attorney upon an appeal of a public record's request. If the City is served with a public  
17 records request for the production of Peregrine's confidential information provided to the City by  
18 Peregrine, pursuant to ORS 192.410, *et. seq.*, then the City, at least seven (7) days before the City  
19 permits inspection of the records by the person making the request, will provide Peregrine with a  
20 copy of the request, so that Peregrine may take steps to prevent the disclosure of the confidential  
21 information. Notwithstanding the foregoing, the Parties acknowledge that, as a public entity, the  
22 City must comply with and will comply with ORS 192.410, *et. seq.* In the event Peregrine  
23 objects to the production of documents and the City does not provide the documents to the

1 person making the request, and the District Attorney or a court later orders production of the  
2 documents, Peregrine shall pay for all costs resulting from such appeal to the District Attorney or  
3 court, including any attorney fees imposed on the City by its failure to provide the documents.

#### 4 **31.18 Venue**

5 Subject to Section 19, any action or suit to enforce or construe any provision of  
6 this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for  
7 Multnomah County.

#### 8 **31.19 No Partnership**

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

#### 13 **31.20 Exclusive Remedies**

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

#### 16 **31.21 Estoppel Certificates**

17 Each Party shall at any reasonable time, and from time to time, within twenty (20)  
18 days after written request by the other Party, execute, acknowledge and deliver to the requesting  
19 Party a certificate stating that: (a) this Agreement is in full force and effect and has not been  
20 modified, supplemented or amended in any way, or if there have been modifications or  
21 amendments, the Agreement is in full force and effect as modified, identifying the modification  
22 agreement; and if the Agreement is not in force and effect, the certificate shall so state; (b) the  
23 date on which the term of this Agreement commenced; (c) whether to the actual knowledge of

1 such Party: all conditions under the Agreement to be performed by a designated Party to that date  
2 have been satisfied and, as of the date of such certificate, whether there are any existing defenses  
3 or offsets which that Party has against the enforcement of the Agreement by the other Party, or, if  
4 such conditions have not been satisfied or if there are any defenses or offsets, the certificate shall  
5 so state. The Party to whom any such certificate shall be issued may rely on the matters set forth  
6 in that certificate and thereafter the Party issuing the same shall be estopped from denying the  
7 veracity or accuracy of the same. Any certificate required to be made by the City pursuant to this  
8 Section 31.23 may be made on its behalf by the CAO.

9 **31.22 No Third Party Beneficiaries**

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

13 **31.23 Incorporation of Exhibits by Reference**

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

16 **31.24 Further Actions**

17 Following Closing, at the request of either party, the other Party shall, without  
18 further consideration, promptly execute and deliver such other instruments and take such further  
19 actions as may be reasonably necessary or appropriate to confer upon the requesting Party the  
20 benefits contemplated by this Agreement, so long as such actions are not contrary to the  
21 provisions of this Agreement.

**31.25 Preceding Actions**

This Agreement was negotiated at the same time as some of the non-construction development activities to be performed by the Parties and referred to in this Agreement were being performed. Accordingly, the Parties acknowledge that certain activities, which this Agreement contemplates occurring after the Effective Date or which are otherwise related to the development of the Project, may have already occurred by the Effective Date. That fact shall not change the legal effect of this Agreement.

*[Remainder of Page Intentionally Left Blank]*



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Peregrine:

PEREGRINE SPORTS, LLC

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

Henry Merritt Paulson, III, Manager

Date: \_\_\_\_\_

CITY:

CITY OF PORTLAND

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

Sam Adams, Mayor

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

City Auditor

Approved As To Form:

\_\_\_\_\_  
City Attorney

**EXHIBIT 1.1**  
**Memorandum of Agreement**

After Recording Return to:  
 Ball Janik LLP  
 101 SW Main Street, Suite 1100  
 Portland, OR 97204  
 Attn: Dina Alexander

**MEMORANDUM OF REDEVELOPMENT AGREEMENT**

PARTIES: CITY OF PORTLAND, ("City")  
 a municipal corporation of the State of Oregon  
 1221 S.W. Fourth Avenue, 1st Floor  
 Portland, Oregon 97205  
 Attn: CAO

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

This Memorandum of Redevelopment Agreement is executed, delivered, and recorded to give notice of the fact that the City and Peregrine have entered into that Redevelopment Agreement dated \_\_\_\_\_, 2010 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: \_\_\_\_\_  
 Sam Adams, Mayor

By: \_\_\_\_\_  
 City Auditor

Approved as to form:

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

Peregrine:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF MULTNOMAH        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by SAM ADAMS as Mayor 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as City Auditor 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as City Attorney for the City of Portland, a municipal corporation of the State of Oregon, to approve the document as to form.

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

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as Manager of Peregrine Sports, a Delaware limited liability company, on behalf of the limited liability company.

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

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 \_\_\_\_\_, 2010, Fee No. 2010-\_\_\_\_\_, Multnomah County Deed Records.

## EXHIBIT 1.2 DEFINITIONS

The following defined terms have the following defined meanings when used in this 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 the Redevelopment Agreement, that definition will not be repeated below but will be cross-referenced to the Section where it is defined.

1. **“50% Construction Documents”** means Construction Documents at the level of detail customarily understood in the construction industry as 50% complete.
2. **“50% Design Development Documents”** means Design Development Documents at the level of detail customarily understood in the construction industry as 50% complete.
3. **“75% Construction Documents”** means Construction Documents at the level of detail customarily understood in the construction industry as 75% complete.
4. **“100% Construction Documents”** means Construction Documents at the level of detail customarily understood in the construction industry as 100% complete.
5. **“100% Design Development Documents”** means Design Development Documents at the level of detail customarily understood in the construction industry as 100% complete..
6. **“100% Schematic Drawings”** means schematic design documents at the 100% level of detail, as defined in the General Construction Contract.
7. **“ACM”** is defined in Section 8.1.2.
8. **“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 Project 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 Project 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 Project Improvements, according to the Project Schedule.

9. **"Additional Services"** are defined in Section 12.10.3.

10. **"Advertising"** means the display of a company's name, logo, trademarks, tradenames, images, or products on a temporary basis, even though the advertising may be contractually committed for more than one (1) year, where the physical representation of such name, logo, trademarks, tradenames, images, or products can be readily removed or replaced with another company's name, logo, trademark, tradename, image or product. Advertising includes sponsorships and promotions.

11. **"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.

12. **"Agreement"** means this PGE Park Redevelopment Agreement (Major League Soccer).

13. **"AIA"** means the American Institute of Architects.

14. **"Alternates"** means the alternative Construction Representatives and Funding Representatives of the City or of Peregrine, respectively.

15. **"Annual Payments"** is defined in the Operating Agreement.

16. **"Application for Payment"** means the application for payment submitted by the Contractor to Peregrine for completed Phase One Work or Phase Two Work, as applicable, which shall be in the form of Exhibit 18.2.1 attached hereto and shall accompany each and every Draw Request.

17. **"Architect"** is defined in Section 2.12.

18. **"Architectural Services Agreement"** is defined in Section 2.12.

19. **"Architectural Work"** means the services to be performed by the Architect pursuant to the Architectural Services Agreement and any amendments thereto.

20. **"Art Budget"** is defined in Section 10.5.1.

21. **"Art Program"** is defined in Section 10.5.1.

22. **"Arts Council"** means the Arts Council of the City of Portland, Oregon.

23. **"ASP"** is defined in Section 19.2.4.



24. “**Award**” is defined in Section 25.1.
25. “**Base Scope**” is defined in Section 11.2.1.
26. “**BDS**” is defined in Section 3.6.2.
27. “**BES**” is defined in Section 3.6.2.
28. “**Bond Proceeds**” means cash proceeds from the City’s sale of the Stadium Bonds.
29. “**Bureaus**” means agencies or departments of the City of Portland, Oregon.
30. “**Business Days**” is defined in Section 31.11.
31. “**CAO**” means the Chief Administrative Officer of the City of Portland.
32. “**CTMP**” is defined in Section 2.11.
33. “**Certificate for Payment**” means a certificate signed by Peregrine or the City authorizing payments of amounts submitted in a Draw Request pursuant to Section 18.2.3.
34. “**Certificate of Final Completion**” is defined in Section 12.8.3.
35. “**Certificate of Substantial Completion**” is defined in Section 12.8.1.
36. “**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.
37. “**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 Work; (b) the amount of the adjustment in the Contractor’s fee and/or the Final GMP; and/or (c) the extent of the adjustment in the Project Schedule, if any.
38. “**Changed Conditions**” means conditions at the Project Site which are concealed physical conditions of a nature which differ materially from those indicated in the Drawings.
39. “**City**” means the City of Portland.
40. “**City Attorney**” means the City Attorney of the City of Portland, Oregon.
41. “**City Change**” means a change in the scope of the Project 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 as a City Cost.

42. **“City Charges”** means fees and other sums charged to the Project by the City in the ordinary course of the City’s business related to the Project (e.g., system development charges and permitting fees).
43. **“City Charter”** means the Charter of the City of Portland, Oregon.
44. **“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.
45. **“City Council”** means the City Council of the City of Portland, Oregon.
46. **“City Costs”** is defined in Section 14.1.2.
47. **“City Debt”** means the total debt incurred by the City to pay for Project Costs and City Costs, including the Interim Financing and the Stadium Bonds (but not both at the same time).
48. **“City Indemnitees”** is defined in Section 26.4.1.
49. **“City Utilities”** means sewer, water, gas, electricity and other line owned by the City within the Project Site.
50. **“City’s Acknowledgement Form”** means the form attached as Exhibit 12.8.3.
51. **“City’s Consulting Architect”** means Alan Beard.
52. **“City’s Design Commission”** means the Design Commission of the City of Portland, Oregon.
53. **“City’s Share”** means 74.19% of an applicable amount.
54. **“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.
55. **“Clinic Facility”** is defined in Section 12.10.1.
56. **“Closing”** means the consummation of events and actions provided for in Section 22.
57. **“Closing Date”** is defined in Section 22.1.
58. **“Closing Project Budget”** is defined in Section 10.2.
59. **“Code Hearings Officer”** means the City’s Code Enforcement Hearings Officer with jurisdiction pursuant to Portland Municipal Code, Title 22.

60. “**Commercial General Liability**” means that type of insurance coverage required to be provided by Peregrine pursuant to Section 23.3.

61. “**Community Outreach Plan**” means a community outreach plan prepared in accordance with the Good Neighbor Agreement.

62. “**Condemnation Account**” means an interest-bearing account administered by the City into which the Award for a Taking of a portion of the Project Improvements shall be deposited.

63. “**Condemnation Deficiency**” is defined in Section 25.2.2.

64. “**Conditional Approval**” or “**Conditionally Approved**” means written approval of the document, submission or proposed activity at issue, subject to stated conditions or qualifications as described in Section 11.8.4. As used throughout the Agreement, “**conditional approval**” or “**conditionally approved,**” when not capitalized, means 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 50% or 100% Design Development Documents or in connection with 50%, 75% or 100% Construction Documents is subject to (a) the applicable Design Documents or Construction Documents not causing a Scope Change or, if the Design Documents or Construction Documents do cause a Scope Change, the City’s right to approve the applicable Design Documents or Construction Documents after any modifications thereto to eliminate the Scope Change or the City’s right to approve the Change Order resulting from the Scope Change, and (b) the applicable Design Documents or Construction Documents not increasing the Project Budget.

65. “**Construction Documents**” shall mean working Drawings and Specifications setting forth in detail the requirements for the construction of the Project Improvements.

66. “**Construction Mitigation Plan**” and “**Construction Mitigation Plans**” are defined in Section 2.9.

67. “**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 \_\_\_\_\_. Peregrine’s Construction Representative is George Messina of ICON Venue Group, LLC.

68. “**Contractor**” means Turner Construction Company or any replacement general contractor hired by Peregrine and approved by the City for the purpose of constructing the Project Improvements pursuant to the Agreement.

69. “**Contractor’s Final GMP**” is defined in Section 11.7.3.

70. “**Contractor’s GMP**” means the Contractor’s Phase One GMP or the Contractor’s Final GMP, as applicable.

71. “**Contractor’s Phase One GMP**” is defined in Section 11.7.1.

72. “**Correction**” means the correction by Peregrine or a Retained Party of a Material Defect.

73. “**Cost Increases**” means an increase in individual items of Project Costs over the amounts set forth in the Closing Project Budget.

74. “**Cost Overrun**” is defined in Section 17.3.

75. “**Council Meeting**” means the City Council session at which the first reading of the ordinance approving this Agreement and the Related Agreements occurs.

76. “**CTMP**” is defined in Section 2.11.

77. “**DEQ**” means the State of Oregon Department of Environmental Quality.

78. “**Default Interest**” is defined in Section 31.8.

79. “**Design Development Documents**” shall mean drawings and other documents prepared by the Architect that fix and describe the size and character of the Project Improvements as to architectural, structural, mechanical, civil, plumbing and electrical systems, materials and such other elements as may be appropriate.

80. “**Design Documents**” is defined in Section 11.1.3.

81. “**Design Review Process**” means the process set forth in Portland Municipal Code Chapter 33.825.

82. “**Destruction Date**” is defined in Section 24.2.

83. “**Dispute**” is defined in Section 19.1.1.

84. “**Disputed Cost**” is defined in Section 14.3.4.

85. “**Dispute Resolution**” means the process set forth in Section 19 for resolution of Disputes between the City and Peregrine pursuant to this Agreement.

86. “**Dispute Resolver**” is defined in Section 19.1.1.

87. “**DOE**” means the State of Oregon Department of Energy.

88. “**Draw Request**” means a written request for funds in the form agreed by the Construction Representatives, submitted by Peregrine for the design and construction of the Project Improvements, as provided for in Section 18. Draw Requests for construction funds will be generally in the form of the AIA draw request documents.

89. “**Drawings**” are the graphic and pictorial portions of the Construction Documents, wherever located and whenever issued, showing the design, location and dimensions of the Project Improvements, generally including plans, elevations, sections, details, schedules and diagrams.

90. “**Economic Interest**” is defined in Section 31.8.
91. “**Effective Date**” means that date stated in the introductory language of this Agreement.
92. “**Environmental Assessments**” is defined in Section 8.1.1.
93. “**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.
94. “**Environmental Laws**” means any Laws that pertain to Environmental Hazards.
95. “**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 Project Site or adjacent or neighboring properties.
96. “**Environmental Remediation Costs**” is defined in Section 8.4.1.
97. “**Environmental Remediation Plan**” is defined in Section 8.2.1.
98. “**Equitable Proceeding**” is defined in Section 19.6.
99. “**Event of Default**” means a default of the Agreement as set forth in Section 26.1.
100. “**Excess Amount**” is defined in Section 24.2.
101. “**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.
102. “**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 Project Site.
103. “**Exemption Ordinance**” is defined in Section 3.4.

104. “**Existing Agreements**” means those agreements to which the Stadium will be subject and which are described on Exhibit 6.3.

105. “**Existing FF&E**” is defined in Section 11.2.3.

106. “**Federal Income Taxes**” means taxes on a Party’s income imposed by the federal government of the United States of America pursuant to the Internal Revenue Code.

107. “**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 12.8.3 have been completed, and the Certificate of Final Completion has been issued.

108. “**Final Project Budget**” means the all-inclusive budget for the Project, not inclusive of City Costs or Peregrine Costs and is described in Section 10.3.

109. “**Franchise Agreement**” is defined in Section 5.1.1.

110. “**Funding Representative**” means that person or persons designated by the City or Peregrine pursuant to Section 18.4.

111. “**General Construction Contract**” is defined in Section 2.13.

112. “**GMP Contingency**” is defined in Section 10.5.4.

113. “**Good Neighbor Agreement**” is defined in Section 2.2.

114. “**Governmental**” means the action of a governmental body with jurisdiction.

115. “**Guarantors**” are Henry Merritt Paulson, Jr. and Henry Merritt Paulson, III.

116. “**Guaranty Payment**” is defined in the Operating Agreement.

117. “**Initial Project Budget**” means the \$31,000,000 Project Budget setting forth all expected Project Costs, which is attached to this Agreement as Exhibit 10.1.

118. “**Insurance Deficiency**” means that amount necessary to restore the Project Improvements in the event the Project Improvements are damaged or destroyed by a casualty not covered under the insurance required by Section 23 or if the Insurance Proceeds are insufficient to pay the cost of such restoration.

119. “**Insurance Proceeds**” is defined in Section 24.1.

120. “**Insurance Proceeds Account**” is defined in Section 24.1.

121. “**Intellectual Property Rights**” has the meaning set forth in the Architectural Services Agreement.

122. “**Interim Financing**” means the City’s funding or financing of the Public Contribution prior to issuance of the Bonds, as applicable, whether in cash or through a line of credit or other debt instrument.

123. “**Investigations**” is defined in Section 7.1.

124. “**Law**” or “**Laws**” means all laws, rules, regulations, codes and ordinances that apply to the Project.

125. “**License To Use Easement**” is described in Section 6.2.2 and attached as Exhibit 6.2.2.

126. “**Liquidated Damages**” is defined in Section 13.4.

127. “**Little Miller Act**” means ORS 279.526, et. seq.

128. “**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.

129. “**MAC**” means the Multnomah Athletic Club.

130. “**MAC Easement**” is defined in Section 2.4.

131. “**MAC Parcel**” means that portion of the Project Site owned by the MAC.

132. “**Material Defect**” means a portion of the Project Improvements that is materially defective under the terms of the Architectural Services Agreement, the General Construction Contract or another Retained Party Contract.

133. “**Memoranda of Agreement**” means those certain memoranda pertaining to this Agreement and the Related Agreements attached as Exhibit 1.1.

134. “**MLS**” means Major League Soccer.

135. “**MLS Certificate**” is defined in Section 4.6.

136. “**Naming Rights**” means the right to apply a non-temporary name to the Stadium or a portion thereof.

137. “**New FF&E**” is defined in Section 11.2.4.

138. “**New Structure**” is defined in Section 3.6.1.

139. “**Objectionable Exceptions**” is defined in Section 6.1.

140. “**ORS**” means the Oregon Revised Statutes.
141. “**Owner**” means the City, the owner of the Project Site (with the exception of the MAC Parcel).
142. “**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.
143. “**Party**” means either Peregrine or the City.
144. “**Peregrine**” means Peregrine Sports LLC, a Delaware limited liability company.
145. “**Peregrine Contribution**” is defined in Section 17.1.1.
146. “**Peregrine Costs**” means those costs for the Project to be paid by Peregrine, other than the Peregrine Contribution or the Additional Peregrine Contribution.
147. “**Peregrine Distributable Cash**” is defined in the Operating Agreement.
148. “**Peregrine Related Parties**” is defined in Section 3.6.2.
149. “**Peregrine’s Share**” means 25.81% of an applicable amount.
150. “**Permitted Exceptions**” is defined in Section 6.1 and are set forth on Exhibit 6.1.
151. “**Phase 1A GMP**” means the guaranteed maximum price contract for that portion of the Phase One Work described in a letter that was delivered to the City on \_\_\_\_\_, 2010 for conditional approval.
152. “**Phase 1B GMP**” means the guaranteed maximum price contract for all of the Phase One Work that was not described or included in the Phase 1A GMP.
153. “**Phase One Construction Mitigation Plan**” means a construction mitigation plan for Phase One of the Project Improvements prepared in accordance with the Good Neighbor Agreement.
154. “**Phase Two Construction Mitigation Plan**” means a construction mitigation plan for Phase Two of the Project Improvements prepared in accordance with the Good Neighbor Agreement.
155. “**Phase One Project Improvements**” or “**Phase One Work**” means all work to be completed under the Contractor’s Phase One GMP, which work includes new field level restrooms, foundations, retaining wall work, and improvements to the access road and restrooms.
156. “**Phase Two Project Improvements**” or “**Phase Two Work**” means all work other than the Phase One Project Improvements to be completed under the Contractor’s Final GMP, which work includes a new grandstand, new seating terraces, concessions and restrooms, locker rooms, team spaces, public concourses, amenities for MLS players and coaches, building



support and function spaces, building storage areas, partial press facilities and broadcast camera platforms, new team retail stores and relocation of the playing field.

157. **“Portland Metropolitan Area”** means Multnomah County, Washington County and Clackamas County, Oregon and Clark County, Washington.

158. **“Preliminary Punch List”** is defined in Section 12.8.1.

159. **“Prepaid Payments”** means the prepayment by Peregrine to the City of annual payments for Peregrine’s use of PGE Park as set forth in the Operating Agreement.

160. **“Prepaid User Fees”** means the surcharge of 7% of each applicable ticket price for events at PGE Park, which amount will be prepaid by Peregrine for operating years 8-25 under the Operating Agreement.

161. **“Prime Rate”** is defined in Section 31.8.

162. **“Private Utilities”** means sewer, water, gas and electricity lines within the Project Site and owned by private companies.

163. **“Project”** is defined in Recital B.

164. **“Project Budget”** means the Closing Project Budget or the Final Project Budget, as applicable.

165. **“Project Completion Guaranty”** is defined in Section 2.8.

166. **“Project Contingency”** is defined in Section 10.5.3.

167. **“Project Costs”** is defined in Section 14.1.3.

168. **“Project Funding Agreement”** is defined in Section 2.6.

169. **“Project 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.

170. **“Project Manager”** means ICON Venue Group, LLC.

171. **“Project Management Agreement”** means the Retained Party Agreement between Peregrine and the Project Manager.

172. **“Project Payment Account”** is defined in Section 17.1.2.

173. **“Project Schedule”** is defined in Section 13.1 and is attached as Exhibit 13.1.

174. **“Project Site”** means 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 referred to in Section 2.6, all as further described in Exhibit 6.1.

175. “**PSU Football Agreement**” is described in Section 2.5.
176. “**Public Contribution**” is defined in Section 17.1.3.
177. “**Public Objectives**” is defined in Section 4.
178. “**Punch List**” is defined in Section 12.8.1.
179. “**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 Project and consistently applied.
180. “**Reasonable Efforts Response Period**” is defined in Section 8.1.3.
181. “**Related Agreements**” is defined in Section 1.1.
182. “**Related Dispute Resolution**” is defined in Section 19.1.2.
183. “**Release**” means a release of Environmental Hazards at, in, on or under the Project Site which exceeds minimum cleanup levels under applicable environmental laws.
184. “**Remediation Work**” means the actions necessary to complete the Environmental Remediation.
185. “**Retained Party**” is defined in Section 3.2.1.
186. “**Retained Party Contract**” means a contract between Peregrine and a Retained Party and any and all amendments thereto.
187. “**Retained Party Contract Requirements**” is defined in Section 3.2.5 and are set forth in Exhibit 3.2.5.
188. “**Revenue Stream Guaranty**” is defined in Section 17.5 and more fully described in the Operating Agreement.
189. “**Schematic Drawings**” shall mean drawings and other documents prepared by the Architect that illustrate the scale and relationship of Project Improvement components, as set forth on Exhibit 11.2.1.
190. “**Scope Change**” means a change to the Base Scope.
191. “**Shaw Report**” is defined in Section 8.1.1.
192. “**Shortstop Operating Agreement**” is defined in Section 2.1.

193. “**Specifications**” are that portion of the Construction Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Project Improvements, and performance of related services.

194. “**Spectator Facility Fund**” means a fund of the City, separate from the City’s general fund, into which funds from certain City-owned properties flow.

195. “**Sponsor**” is defined in Section 12.10.1.

196. “**Sponsorship Agreement**” is defined in Section 12.10.1.

197. “**Stadium**” is defined in Recital A.

198. “**Stadium Bonds**” means the bonds issued by the City for long-term financing of the Public Contribution.

199. “**Substantial Completion**” or “**Substantially Complete**” means the stage in the progress of the Project Improvements when the Project Improvements or designated portion thereof are sufficiently complete in accordance with the Drawings and Specifications so that Peregrine can occupy or utilize the Project Improvements for its intended use and a temporary certificate of occupancy for the Project Improvements has been issued by the appropriate governmental authority.

200. “**Substantial Completion Date**” is defined in Section 13.1.

201. “**Substantial Portion**” is defined in Section 25.1.

202. “**SUM**” is defined in Section 4.6.

203. “**Supplemental Environmental Assessment**” is defined in Section 8.1.3.

204. “**Taking**” is defined in Section 25.1.

205. “**Taking Date**” is defined in Section 25.1.

206. “**TC Line**” is defined in Section 3.6.1.

207. “**Team**” means the Major League Soccer team to be acquired by Peregrine pursuant to Section 5.

208. “**Term**” means the duration of the Agreement, which shall commence as of the Effective Date and shall terminate pursuant to Section 27.2.

209. “**Term Sheet**” is defined in Recital E.

210. “**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.

211. “**Unforeseeable Conditions**” means concealed physical conditions at the Project 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 Project Schedule.

212. “**User Fees**” means the surcharge of 7% of each applicable ticket price for events at PGE Park, which amount will be paid by Peregrine into the Spectator Facilities Fund.

213. “**Violation**” is defined in the Good Neighbor Agreement.

214. “**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 Project 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.

215. “**Wind Down Costs**” means reasonable and necessary costs incurred by Retained Parties to wind down or cease performance of services following a termination of this Agreement.

**EXHIBIT 2.3**  
**Exclusive Use and Guaranty Agreement**



1 It is expressly acknowledged by Peregrine and each Guarantor that the execution and delivery of  
2 this Agreement by Peregrine and each Guarantor is a condition to the execution and delivery of  
3 the Operating Agreement and Redevelopment Agreement by the City. The Guarantors join in  
4 this Agreement only for certain limited purposes and are only personally bound to certain  
5 covenants, all as expressly set forth below.

6 D. Any capitalized terms used in this Agreement, but not defined in this  
7 Agreement, shall have the meaning given them in the Operating Agreement.

8 NOW, THEREFORE, in consideration of the execution of the Operating  
9 Agreement and the Redevelopment Agreement, and for other good and valuable consideration,  
10 the receipt and sufficiency of which are hereby acknowledged, Peregrine, the Guarantors, and the  
11 City agree as follows:

12 SECTION 1 COVENANT REGARDING USE OF STADIUM

13 1.1 Home Games

14 Peregrine hereby agrees that any and all Home Games (as defined below in this  
15 Section 1.1) during the Effective Period (as defined below in this Section 1.1) shall be played in  
16 the Stadium, unless the City shall have given its prior, written consent to the performance of  
17 specified Home Games at a different location or locations, which consent may be withheld in the  
18 sole and absolute discretion of the City. The term "Home Games" shall mean all preseason,  
19 regular season and postseason MLS soccer games for which the Franchise is deemed the "home  
20 team" pursuant to the rules of MLS, as in effect from time to time, other than any such games  
21 which are required to be played at neutral venues pursuant to the rules of MLS as in effect from  
22 time to time. The "Effective Period" is the original twenty-five (25) year term of the Operating  
23 Agreement commencing on January 1, 2011, and the extensions, if any, of the Operating  
24 Agreement. Notwithstanding the foregoing, the Effective Period shall terminate upon the  
25 termination of the Operating Agreement for any reason other than a breach thereof by Peregrine.

1           1.2    Relocation

2                   Peregrine shall not relocate or seek to relocate the playing site of the Home  
3 Games during the Effective Period played by its Franchise, without the prior written consent of  
4 the City, which may be withheld in the sole and absolute discretion of the City. Notwithstanding  
5 the foregoing, Peregrine may seek to relocate the playing site of the Franchise's Home Games  
6 when there are fewer than two years remaining on the original twenty-five (25) year term of the  
7 Operating Agreement, and during any extension thereof; *provided, however*, that Peregrine may  
8 not actually relocate the playing site of the Franchise's Home Games until the Effective Period  
9 has expired or terminated.

10           1.3    Substantial Completion. Peregrine shall not be required to play Home Games at  
11 the Stadium until Substantial Completion (as defined in the Redevelopment Agreement).  
12

13           1.4    Continuous Operations

14                   Throughout the Effective Period, Peregrine agrees to: (a) not default on or forfeit  
15 the Franchise or both; (b) field a MLS soccer team; (c) play Home Games as provided in Section  
16 1.1; and (d) in all other respects continuously operate an MLS soccer team. The continuous  
17 operation obligation set forth in this Section 1.4 shall cease with respect to Peregrine upon the  
18 failure of MLS or the sale of the Franchise by Peregrine pursuant to Section 3.3. For purposes of  
19 this Agreement, the "failure of MLS" means that MLS ceases operations and is not replaced by a  
20 successor league or any new association of professional soccer franchises in which Peregrine is a  
21 franchisee of such new association within two years of such cessation.

22           1.5    Stadium Closure

23                   In the event Peregrine believes than an unanticipated event or emergency renders  
24 the Stadium temporarily unavailable or unsuitable for one or more Home Games, Peregrine shall  
25 promptly notify the City and consult with the City in good faith and in such a manner as is  
26 reasonable under the circumstances prior to reaching a determination that an unanticipated event



1 or emergency renders the Stadium temporarily unavailable or unsuitable and, following that  
2 consultation, may elect to play Home Games in another venue until the Stadium becomes  
3 available and suitable for such purpose. Peregrine's election to play a Home Game at a site other  
4 than the Stadium due to the circumstances referred to in this Section 1.5, does not affect any  
5 claim the City may have that the cause of the temporary unavailability or unsuitability of the  
6 Stadium was due to a breach of the Operating Agreement by Peregrine.

7 SECTION 2 COVENANT REGARDING LOCATION OF PEREGRINE'S PLACE OF  
8 BUSINESS

9 Peregrine agrees that, at all times during the Effective Period, the principal place  
10 of business of Peregrine shall be located within either: the City of Portland, or the city which is  
11 the principal place of business of either of the Guarantors or any successor owner of Peregrine.

12 SECTION 3 BINDING EFFECT

13 3.1 Successors

14 The covenants and restrictions of Peregrine set forth in this Agreement shall be  
15 binding upon Peregrine, its successors and assigns, and any purchaser or transferee of the  
16 Franchise. The covenants and restrictions of the Guarantors set forth in this Agreement shall be  
17 binding upon each Guarantor and each Guarantor's estate, heirs, successors and assigns.

18 3.2 Liquidation of Peregrine

19 In the event of the liquidation or dissolution of Peregrine, the covenants and  
20 restrictions of Peregrine set forth in this Agreement shall be binding upon the owners of  
21 Peregrine or any other distributee of the Franchise and related assets and properties of Peregrine.

22 3.3 Transfer of Franchise

23 Without limiting the foregoing, Peregrine agrees that it shall be a condition  
24 precedent to the consummation of any sale or other transfer of the Franchise, that the purchaser  
25 or transferee agree in writing to comply, without modification or qualification, with the

1 covenants and restrictions applicable to Peregrine set forth in this Agreement. Any sale or other  
2 transfer of the Franchise made without execution by the purchaser or transferee of the  
3 instrument(s) described in the preceding sentence shall be null and void and of no force or effect,  
4 but the failure to execute such instrument shall in no event limit or modify the obligation of such  
5 purchaser or transferee to comply with the covenants and restrictions set forth in this Agreement.  
6 Any such instrument shall identify the City as an express third party beneficiary of such  
7 covenants and restrictions, with full standing to enforce the same, as if the City were a party to  
8 such instrument. Peregrine's obligations (excluding any accrued obligations or liabilities as of  
9 the effective date of a transfer of the Franchise) pursuant to this Agreement shall cease as of the  
10 effective date of a transfer pursuant to this Section 3.3 if and only if the obligations under this  
11 Agreement have been expressly assumed as contemplated by this Section 3.3.

#### 12 3.4 Change of Control

13 Without limiting the foregoing, the Guarantors agree that it shall be a condition  
14 precedent to the consummation of any Change of Control that (a) the purchaser or transferee  
15 agree in writing to comply, without modification or qualification, with the covenants and  
16 restrictions applicable to Peregrine set forth in this Agreement and (b) if required, the assumption  
17 agreement referred to in Section 15.1.5.6 of the Operating Agreement has been executed by a  
18 Person approved of by the City pursuant to Section 15.1.5 of the Operating Agreement. Any  
19 Change of Control of Peregrine made without execution by the purchaser or transferee and its  
20 principal(s) of the instrument(s) described in the preceding sentence shall be null and void and of  
21 no force or effect, but the failure to execute such instrument shall in no event limit or modify the  
22 obligation of such purchaser or transferee and its principal(s) to comply with the covenants and  
23 restrictions set forth in this Agreement. Any such instrument shall identify the City as an express  
24 third party beneficiary of such covenants and restrictions, with full standing to enforce the same,  
25 as if the City were a party to such instrument. Guarantors agree to provide the City with proof of  
26 satisfaction of the conditions precedent to closing any Change of Control. The Guarantors'

1 obligations (excluding any accrued obligations or liabilities as of the effective date of a Change  
2 of Control) pursuant to this Agreement shall cease as of the effective date of a Change of Control  
3 pursuant to this Section 3.4, if and only if the obligations under this Agreement have been  
4 expressly assumed as contemplated by Section 15.1.5.6 of the Operating Agreement.

5           3.5    Change in Franchise, MLS

6           The term "Franchise" shall be deemed to include any new franchise issued by  
7 MLS to Franchisee (as defined below), any replacement or renewal franchise issued by MLS to  
8 Franchisee, or any franchise issued to Franchisee by a new major league soccer team, in every  
9 case only if the preceding Franchise expires or is terminated in connection therewith. For  
10 purposes of this Agreement, the term "Franchisee" means Peregrine and any assignee or  
11 successor of Peregrine, the Guarantors (including the Guarantors' respective estates and heirs),  
12 or any newly formed corporate or other entity where any ownership interest is held by either  
13 Guarantor or Peregrine. The term "MLS" includes Major League Soccer and any successor to  
14 Major League Soccer or any new association of professional soccer franchises in which  
15 Peregrine is a franchisee of such new association.

16           3.6    Membership Interest Provision

17           Peregrine shall cause all subscription or other agreements evidencing ownership  
18 of an interest in Peregrine to contain a provision substantially in the following form:

19           "THE MEMBERSHIP INTEREST REPRESENTED BY THIS  
20           CERTIFICATE IS SUBJECT TO RESTRICTIONS SET FORTH IN  
21           THAT CERTAIN EXCLUSIVE USE AND GUARANTY  
22           AGREEMENT, DATED \_\_\_\_\_, 2010, BETWEEN THE  
23           COMPANY AND THE CITY OF PORTLAND, AND NO INTEREST  
24           THEREIN, SHALL BE TRANSFERRED OR OTHERWISE DISPOSED  
25           OF EXCEPT AS PROVIDED IN SUCH AGREEMENT."

1           3.7    Limitation of Liability

2           Notwithstanding anything to the contrary in this Agreement, upon a sale or other  
3 transfer of the Franchise or Change of Control of the Franchisee made in full conformance with  
4 the provisions of this Agreement and the Operating Agreement to a Person not affiliated with  
5 Franchisee or Guarantor, neither Franchisee nor Guarantor shall have any liability under this  
6 Agreement with respect to breaches of this Agreement by the purchaser, transferee or other  
7 subsequent purchaser or transferee after the effective date of transfer of the Franchise or Change  
8 of Control (except for then any accrued obligations or liabilities), nor shall any breach of this  
9 Agreement by any such purchaser or transferee constitute an event of default under the Operating  
10 Agreement unless such purchaser or transferee is also the party to the Operating Agreement with  
11 the City.

12    SECTION 4    GUARANTY

13           4.1    Guaranteed Obligations

14           The Guarantors, jointly and severally, hereby absolutely, irrevocably, and  
15 unconditionally guarantee, as principal obligors and not as a sureties, to the City: (a)  
16 performance of the Guarantors' obligations set forth in Section 3.4 to the extent of and on  
17 account of remedies and damages based on a breach by either or both Guarantors of any of their  
18 obligations under Section 3.4 (the "Guaranteed Obligations"); (b) the payment of all losses,  
19 costs, expenses, liabilities and damages incurred by the City arising from any failure of the  
20 Guarantors to perform the Guaranteed Obligations; and (c) to pay all Enforcement Costs (as  
21 hereinafter defined). "Enforcement Costs" means any and all reasonable attorneys' fees, costs  
22 and expenses, including without limitation, court costs, filing fees, and all other costs and  
23 expenses incurred in connection with enforcement of Guarantor's obligations under or  
24 interpretation of this Agreement. This Agreement shall not be interpreted or construed to make  
25 the Guarantors liable for the actions of Peregrine or Franchisee (if the Franchisee is other than  
26 Peregrine) under this Agreement, even if an interpretation to that effect could be made. **This**

1 **Agreement is an absolute, irrevocable, present and continuing guaranty of the Guaranteed**  
2 **Obligations and not of collection.**

3 4.2 Waivers by Guarantors. The Guarantors unconditionally and irrevocably, to the  
4  
5 extent legally permitted:

6 4.2.1 Covenant that this Agreement will not be discharged except by complete  
7 performance by the Guarantors of the Guaranteed Obligations.

8 4.2.2 Waive any defense other than full performance of the Guaranteed  
9 Obligations by Peregrine, a Franchisee or any Guarantor, and the termination of the Operating  
10 Agreement for any reason other than a breach thereof by Peregrine.

11 4.2.3 Waive any claim based on any alleged impairment of recourse against  
12 Peregrine or any other person or entity liable for the Guaranteed Obligations (whether such  
13 impairment is alleged to be intentional, reckless, negligent or otherwise).

14 4.2.4 Waive any claim or circumstance which constitutes a legal or equitable  
15 discharge of a guarantor or surety.

16 4.2.5 Waive any claim that the death of a Guarantor revokes this Agreement as  
17 to such Guarantor unless and until written notice thereof is actually received by City and until all  
18 obligations of the Guarantor under this Agreement have been performed by such Guarantor's  
19 estate or heirs.

20 4.3 Solvency of the Guarantors

21 Each Guarantor (a) is now generally paying his debts as they mature, (b) now  
22 owns, property which, at a fair valuation, is greater than the sum of his debts, and (c) now has  
23 capital sufficient to carry on his business and personal affairs.

1           4.4    Binding Obligation

2                   This Agreement has been duly and validly executed and delivered by the  
3 Guarantors and constitutes the legal, valid and binding obligations of each Guarantor, jointly and  
4 severally, enforceable against each Guarantor in accordance with its terms.

5           4.5    Modifications.

6                   In addition to but not in limitation of the foregoing, the City may, at any time and  
7 from time to time, without the consent of, or notice or responsibility to the Guarantors, and  
8 without impairing or releasing the obligations of the Guarantors (with Peregrine's consent where  
9 otherwise required): (a) exercise or refrain from exercising, in any manner and in any order, any  
10 remedy it may have with respect to any of the Guaranteed Obligations; (b) exercise or refrain  
11 from exercising any rights against Peregrine or others, including the Guarantors, or otherwise in  
12 any way act or refrain from acting; and (c) settle or compromise any obligations or liabilities of  
13 Peregrine.

14          4.6    Primary Guaranty.

15                   The Guaranteed Obligations are, and remain until fully satisfied, a primary  
16 obligation of the Guarantors.

17          4.7    No Implied Waiver.

18                   No delay on the part of the City in exercising any of its rights under this  
19 Agreement, and no partial or single exercise or such rights, and no action or failure to act by the  
20 City, with or without notice to the Guarantors or anyone else, shall constitute a waiver of such  
21 right, or shall affect or impair the obligations of the Guarantors under this Agreement.

22          4.8    Information Regarding Peregrine.

23                   The City is not required to disclose to the Guarantors any information with  
24 respect to the financial condition or character of Peregrine, any collateral, other guarantees, or

1 any action or non-action on the part of the City or Peregrine or any person connected with the  
2 credit or collateral thereto. Each Guarantor represents that he is fully aware of the financial  
3 condition of Peregrine and is in such a position by virtue of its relationship to Peregrine to obtain  
4 all necessary financial information concerning Peregrine's business. Each Guarantor shall  
5 assume the responsibility for keeping himself informed of the status of Peregrine's performance  
6 of Peregrine's obligations under this Agreement, and the City shall have no duty to advise either  
7 Guarantor of any information now or hereafter known regarding Peregrine or Peregrine's  
8 obligations under this Agreement.

9 4.9 Direct Enforcement.

10 The City shall not be required to first resort to performance from Peregrine prior  
11 to requiring either or both Guarantors to fully satisfy the Guaranteed Obligations.

12 4.10 Exercise of Remedies by the City.

13 Each Guarantor consents to the City at any time exercising, in its sole discretion,  
14 any right or remedy or any combination thereof which may then be available to the City against  
15 Peregrine under this Agreement. The exercise of any such rights or remedies shall not constitute  
16 a legal or equitable discharge of such Guarantor.

17 4.11 Impact of Peregrine Bankruptcy.

18 The liability of the Guarantors pursuant to this Agreement shall not be affected in  
19 any way by the institution of any proceedings involving Peregrine under the Federal Bankruptcy  
20 Code or by any action taken in any such proceedings. Notwithstanding the foregoing, the  
21 Guarantors shall have no liability to the City with respect to any decision by Peregrine to no  
22 longer operate a soccer team due to the failure of MLS.

1    SECTION 5    REMEDIES

2                    In the event of a breach of this Agreement by Peregrine or either Guarantor, the  
3    City will suffer both damages compensable by the payment of money and damages which will  
4    not be compensable by money and which will be irreparable. Accordingly, the City is entitled to  
5    the following.

6                    5.1    Compensable Damages

7                    In the event of a breach of this Agreement by Peregrine or either Guarantor, the  
8    City shall be entitled to claim all actual damages and consequential damages against the  
9    breaching party.

10                   5.2    Non-compensable Damages

11                   Peregrine and the Guarantors acknowledge that some of the damage that would be  
12    suffered by the City in the event of a breach of the terms of this Agreement could not be  
13    adequately compensated by an award of damages because of the unique nature of the obligations  
14    of Peregrine and the Guarantors, respectively, and the City may seek a decree of specific  
15    performance and/or injunctive relief with respect to any of the obligations of Peregrine or the  
16    Guarantors, respectively, under this Agreement, without the requirement of a bond.

17                   5.3    Cross-Default

18                   Subject to Section 3.7, any breach of this Agreement shall also constitute an event  
19    of default under the Operating Agreement, so long as the owner of the Franchise, either directly  
20    or through a controlled affiliate, is the party to the Operating Agreement with the City.

21                   5.4    All Remedies

22                   Upon a breach of this Agreement by Peregrine or either or both Guarantors,  
23    respectively, the City shall be entitled to pursue all legal and equitable remedies against the



1 breaching party, whether or not those are specifically set forth in this Agreement. All remedies  
2 are cumulative and may be exercised concurrently, successively, or in any order.

3 SECTION 6 GENERAL PROVISIONS

4 6.1 Benefit

5 The provisions of this Agreement shall inure to the benefit of the City and its  
6 successors and assigns.

7 6.2 Integration

8 This Agreement and all of the Related Documents contain the entire agreement  
9 and understanding of the City, the Guarantors and Peregrine with respect to the matters described  
10 herein, and supersedes all prior and contemporaneous agreements between them with respect to  
11 such matters.

12 6.3 Amendment

13 Except as expressly allowed by the terms of this Agreement, this Agreement may  
14 not be modified or amended except by the written agreement of the City, the Guarantors and  
15 Peregrine.

16 6.4 Further Assurances

17 Peregrine agrees to take such further actions and execute such additional  
18 documents as may be necessary or appropriate to carry out the provisions and purposes of this  
19 Agreement, including, without limitation, the execution of any instruments necessary to record  
20 or provide notice of the encumbrance imposed by this Agreement on Peregrine's right and power  
21 to sell or otherwise dispose of the Franchise.

22 6.5 Attorneys' Fees

23 If a suit, action, or other proceeding of any nature whatsoever (including any  
24 proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy

1 arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing or  
2 non-defaulting party shall be entitled to recover its attorneys', accountants', and other experts'  
3 fees and all other fees, costs, and expenses actually incurred and reasonably necessary in  
4 connection therewith, as determined by the court at trial or on any appeal or review, in addition  
5 to all other amounts provided by law.

6           6.6    Construction and Interpretation

7           The headings or titles of the sections of this Agreement are intended for ease of  
8 reference only and shall have no effect whatsoever on the construction or interpretation of any  
9 provision of this Agreement. The use in this Agreement of the words "including," "such as," and  
10 words of similar import following any general statement, term, or matter shall not be construed  
11 to limit such statement, term, or matter in any manner, whether or not language of non-limitation  
12 (such as "without limitation" or "but not limited to") is used in connection therewith, but rather  
13 shall be deemed to refer to all other items or matters that could reasonably fall within the scope  
14 of the general statement, term, or matter. All provisions of this Agreement have been negotiated  
15 at arms length and this Agreement shall not be construed for or against the City, the Guarantors,  
16 or Peregrine by reason of the authorship or alleged authorship of any provision hereof.

17           6.7    Waiver

18           Failure of the City at any time to require performance of any provision of this  
19 Agreement shall not limit the City's right to enforce such provision, nor shall any waiver of any  
20 breach of any provision of this Agreement constitute a waiver of any succeeding breach of such  
21 provision or a waiver of such provision itself. Any waiver of any provision of this Agreement  
22 shall be effective only if set forth in writing and signed by the City.

23           6.8    Severability

24           If any term or provision of this Agreement of the application thereof to any person  
25 or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement

1 and the application of such term or provision to persons or circumstances other than those as to  
 2 which it is held invalid or unenforceable shall not be affected thereby, and each term or provision  
 3 of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4 6.9 Notices

5 All notices, requests, and other communications given under this Agreement shall  
 6 be in writing and shall with all postage and delivery charges prepaid by personal delivery, by  
 7 messenger, by overnight courier service, or by certified or registered U.S. Mail, return receipt  
 8 requested, addressed as follows:

9 If to the City:

10 City of Portland  
 11 1221 S.W. Fourth Avenue, 1<sup>st</sup> Floor  
 12 Portland, Oregon 97205  
 13 Attn: City Auditor  
 14 Fax No.: 503-823-4571  
 15 Confirmation No.: 503-823-4078

16 with copies to:

17  
 18 Office of the City Attorney  
 19 City of Portland, Oregon  
 20 1221 S.W. Fourth Avenue, 4<sup>th</sup> Floor  
 21 Portland, Oregon 97204  
 22 Attn: City Attorney  
 23 Fax No.: 503-823-3089  
 24 Confirmation No.: 503-823-4047

25 and to:

26 Office of Management and Finance  
 27 City of Portland, Oregon  
 28 1120 S.W. Fifth Avenue, 12<sup>th</sup> Floor  
 29 Portland, Oregon 97204  
 30 Attn: Chief Administrative Officer  
 31 Fax No.: 503-823-5384  
 32 Confirmation No.: 503-823-5288

33 and to:

1 Ball Janik LLP  
2 One Main Place  
3 101 SW Main Street, Suite 1100  
4 Portland, Oregon 97204  
5 Attn: Steve Janik/Dina Alexander  
6 Fax No.: 503-295-1058  
7 Confirmation No.: 503-228-2525

8 If to Peregrine:  
9

10 Peregrine Sports, LLC  
11 1844 SW Morrison  
12 Portland, Oregon 97205  
13 Attn: Merritt Paulson  
14 Fax No.: 503-553-5405  
15 Confirmation No.: 503-553-5401  
16

17 With a copy to:  
18

19 Jeannette Launer, Esq.  
20 5216 SW Burton Drive  
21 Portland, OR 97221  
22 Fax No.: 503-221-7045  
23 Confirmation No.: 503-502-1030  
24

25 If to Guarantor:  
26

27 c/o Robbins & Associates  
28 333 W. Wacker Drive, Suite 830  
29 Chicago, IL 60606  
30 Fax No.: 312-609-1105  
31 Confirmation No.: 312-609-1100  
32

33 With a copy to:  
34

35 Mayer Brown LLP  
36 71 S. Wacker Drive  
37 Chicago, IL 60606  
38 Attn.: Dan Luther, Esq.  
39 Fax No.: 312-706-9216  
40 Confirmation No.: 312-782-0600

41 or to such other address as the City, Guarantor, or Peregrine may have furnished to the others by  
42 written notice in the manner provided in this Section 6.9. Any such notice, request, consent, or

1 other communication shall be deemed received on the earlier of actual delivery or refusal of a  
2 party to accept delivery thereof. Notices may be sent by counsel for a party to this Agreement.

3 6.10 Joint and Several Liability

4 To the extent Peregrine and the Guarantors are both responsible for the  
5 performance of any obligations under this Agreement, the liability of both such parties shall be  
6 joint and several with respect to such obligations.

7 6.11 Governing Law

8 This Agreement shall be governed by and construed in accordance with the laws  
9 of the State of Oregon.

10 6.12 Counterparts

11 This Agreement may be executed in any number of counterparts, each of which  
12 shall be an original but all of which together shall constitute one instrument.

13 IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the  
14 date first above written.

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**Peregrine:**

**PEREGRINE SPORTS, LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Manager

**Guarantors:**

\_\_\_\_\_  
**HENRY MERRITT PAULSON, JR.**  
  
\_\_\_\_\_  
**HENRY MERRITT PAULSON, III**

City:

CITY OF PORTLAND, a municipal corporation

By: \_\_\_\_\_  
Sam Adams, Mayor

By: \_\_\_\_\_  
LaVonne Griffin-Lavade

Approved as to Form:

\_\_\_\_\_  
City Attorney

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**EXHIBIT 2.6**  
**Project Funding Agreement**

1 **COMPLETION GUARANTY**

2 **PARTIES:** **HENRY MERRITT PAULSON, JR.**, an individual,  
 3 and **HENRY MERRITT PAULSON III**, an individual (each, a "Guarantor")  
 4 and collectively, the "Guarantors"; and

5 **CITY OF PORTLAND**, a municipal corporation of the State of  
 6 Oregon (the "City")

7 **EFFECTIVE DATE:** \_\_\_\_\_, 2010  
 8

9 **BACKGROUND**

10 A. The City and Peregrine Sports, LLC ("Peregrine") have entered into a Stadium  
 11 Redevelopment Agreement (the "Redevelopment Agreement") dated as of the date of this  
 12 Completion Guaranty ("Guaranty") in connection with the renovation of PGE Park for use as a  
 13 stadium for Major League Soccer (the "Project").

14 B. Henry Merritt Paulson, III is the Manager of Peregrine, and Henry Merritt  
 15 Paulson, Jr. is a member of Peregrine. This Guaranty is entered into pursuant to Section 21.1.1  
 16 of the Redevelopment Agreement.

17 C. All capitalized words in this Guaranty shall have the meaning as set forth in the  
 18 Redevelopment Agreement unless a different meaning is specifically set forth in this Guaranty.

19 In consideration of the execution and delivery by the City of the Redevelopment  
 20 Agreement and the Related Agreements, and for other good and valuable consideration, the  
 21 receipt and sufficiency of which are hereby acknowledged, the Guarantors and the City agree as  
 22 follows:

23 1. **COMPLETION GUARANTY**

24 1.1 Notice to Guarantor To Perform. The City shall be entitled to give notice to either  
 25 Guarantor requesting that either or both Guarantors commence to perform their obligations under  
 26 this Guaranty upon the happening of any one or more of the following events:

27 1.1.1 Peregrine commences a voluntary case under the federal bankruptcy laws  
 28 or under any other federal or state law relating to insolvency or debtor's relief or such a case is  
 29 commenced against Peregrine by any person and is not dismissed within sixty (60) days.

30 1.1.2 Peregrine consents to the appointment of a receiver, trustee, or custodian  
 31 of any of Peregrine's assets, or Peregrine makes a general assignment for the benefit of its  
 32 creditors.

33 1.1.3 Work ceases on the Project Site for more than thirty (30) consecutive days  
 34 or Peregrine exhibits a pattern of substantial work stoppages over a six (6) month period, in each  
 35 case not resulting from an Excused Delays under the Redevelopment Agreement, act or omission



1 of the City or breach by the City of the Redevelopment Agreement or any of the Related  
2 Agreements.

3 1.1.4 Peregrine fails to Substantially Complete the Project Improvements by the  
4 date required by the Redevelopment Agreement, which date is subject to Excused Delays as  
5 described in the Redevelopment Agreement (the "Completion Date"), or Peregrine fails to  
6 Finally Complete the Project Improvements as required by the Redevelopment Agreement and, in  
7 either instance, the City has terminated the Redevelopment Agreement.

8 1.1.5 Peregrine gives notice to the City that it does not intend to complete the  
9 Project Improvements.

10 1.2 Guarantors' Obligations Under Completion Guaranty. This Guaranty is an  
11 absolute, irrevocable, present and continuing guaranty of payment and performance of the  
12 obligations set forth herein and not of collection, up to the Obligation Cap (as defined below).

13 1.2.1 Each Guarantor, jointly and severally, hereby absolutely, irrevocably, and  
14 unconditionally guarantees, as a principal obligor and not as a surety, to the City: (a) the  
15 Substantial Completion of the Project Improvements and the Final Completion of the Project  
16 Improvements, free and clear of all claims for mechanic's and materialmen's liens (except those  
17 arising out of valid claims against the City) and in accordance with: (i) all applicable Laws; (ii)  
18 the Drawings and Specifications; and (iii) the applicable provisions of the Redevelopment  
19 Agreement; (b) the payment of all amounts necessary to complete the Project Improvements and  
20 to pay all other obligations of the Guarantors under this Guaranty; (c) the payment of all  
21 Enforcement Costs (as hereinafter defined); and (d) the payment of all losses, costs, expenses,  
22 liabilities and damages incurred by the City arising from any failure of the Guarantors to  
23 complete the Project Improvements in accordance with the terms of this Guaranty by the  
24 Completion Date. "Enforcement Costs" means any and all reasonable attorneys' fees, costs and  
25 expenses, including without limitation, court costs, filing fees, and all other costs and expenses  
26 reasonably incurred in connection with enforcement of this Guaranty.

27 1.2.2 The obligations described in Section 1.2.1 above are the "Guaranteed  
28 Obligations" of the Guarantors. The Guarantors' liability with respect to the Guaranteed  
29 Obligations and any and all other obligations under this Guaranty shall not under any  
30 circumstances exceed in the aggregate, with respect to both Guarantors, the maximum amount of  
31 \$20,000,000 (the "Obligation Cap").

32 1.2.3 If the Guarantors fail to commence and pursue diligently the performance  
33 of the Guaranteed Obligations within thirty (30) days after receipt of written notice from the City  
34 demanding the performance of either or both Guarantors, then, either before or after pursuing any  
35 other remedy against the Guarantors or Peregrine, the City shall have the right, but not the  
36 obligation, to complete the Project Improvements or call upon any other reputable parties to  
37 complete the Project Improvements (including the right to assume from Peregrine the General  
38 Construction Contract or replace the Contractor in accordance with the terms thereof), with such  
39 changes or modifications to the Drawings and Specifications or the Project Budget as the City  
40 deems necessary in the City's reasonable discretion, and the City shall have the right to expend  
41 such sums as the City in its sole and exclusive discretion deems proper in order to complete the  
42 Project Improvements and to receive reimbursement from the Guarantors up to the Obligation

1 Cap. During the course of any construction undertaken by the City or by any other party on  
 2 behalf of the City, the Guarantors shall pay on demand, up to the Obligation Cap, any and all  
 3 amounts due to contractors, subcontractors and material suppliers and for permits, licenses,  
 4 entitlements, bonds, taxes, assessments and other items necessary or desirable in connection  
 5 therewith.

6 1.2.4 If the City has sent the Guarantors written notice requiring either or both  
 7 Guarantors to perform the Guaranteed Obligations, the City shall make available to the  
 8 Guarantors the balance of the undisbursed Public Contribution pursuant to and in accordance  
 9 with the Redevelopment Agreement solely for the purposes of completing the Project  
 10 Improvements and fulfilling their other obligations under this Guaranty, so long as: (a) no  
 11 default exists under this Guaranty; (b) the Guarantors have expressly reaffirmed all obligations  
 12 assumed by them under this Guaranty and perform all obligations under this Guaranty up to the  
 13 time of completion of the Project Improvements; and (c) all other conditions of the  
 14 Redevelopment Agreement to the disbursement of such proceeds are satisfied.

15 1.3 Term of Guarantors' Obligations. Once the Guarantors have been obligated to  
 16 commence performance under the Guaranty pursuant to Section 1.1, the Guarantors' obligation  
 17 to perform and this Guaranty shall terminate upon the earliest of (i) Final Completion of the  
 18 Project and (ii) payment by the Guarantors in an amount equal to the Obligation Cap. If the  
 19 Guarantors have not been obligated to commence performance under this Guaranty pursuant to  
 20 Section 1.1 and Peregrine has Substantially Completed the Project Improvements, then the  
 21 Guarantors' obligations under the Guaranty shall cease and the City shall promptly upon written  
 22 request execute a written release of the Guarantors' obligations under this Guaranty.

## 23 2. LIMITATION OF LIABILITY

24 Notwithstanding anything to the contrary in this Guaranty:

25 2.1 Performance Limitation. The Guarantors' obligations under the Guaranty are  
 26 solely the Guaranteed Obligations, and the Guarantors shall have no obligation to perform any of  
 27 Peregrine's other obligations under the Redevelopment Agreement or any of the Related  
 28 Agreements.

29 2.2 City's Obligation To Perform. The Guarantors' obligations under this Guaranty to  
 30 the City are subject to there not being a City Event of Default under the Redevelopment  
 31 Agreement or any of the Related Agreements of (a) any of its monetary obligations relating to the  
 32 funding of the Public Contribution and City Costs, when and as they become due, which will  
 33 materially and adversely affect the Guarantors in the fulfillment of their obligation under this  
 34 Guaranty, or (b) any of the City's non-monetary obligations which will materially and adversely  
 35 affect the ability of the Guarantors to fulfill their obligations under this Guaranty.

36 2.3 Other Defenses. The Guarantors shall be entitled to maintain all defenses to  
 37 performance of this Guaranty which Peregrine is entitled to assert as to its obligations, except for  
 38 any defense: (a) arising by reason of Peregrine being the debtor in a case arising under the  
 39 United States Bankruptcy Code (the "Code"); (b) arising by reason of Peregrine's lack of  
 40 capacity or authority to enter into the Redevelopment Agreement or perform its obligations

1 thereunder; or (c) already raised by Peregrine and adjudicated, mediated or arbitrated as provided  
2 in the Redevelopment Agreement.

3 3. ADDITIONAL GUARANTY PROVISIONS

4 3.1 Waivers by the Guarantors. Each Guarantor unconditionally and irrevocably, to  
5 the extent legally permitted:

6 3.1.1 Waives any requirement that the City, in the event of default by Peregrine,  
7 first make any demand, or seek to enforce remedies against Peregrine before seeking to enforce  
8 this Guaranty.

9 3.1.2 Waives any defense other than (a) those defenses that each is permitted to  
10 maintain pursuant to Section 2.3 above, (b) the defense that Final Completion of the Project  
11 Improvements has occurred, and (c) the defense that the Guarantors have already made payments  
12 up to the amount of the Obligation Cap.

13 3.1.3 Waives any claim based on any alleged impairment of any collateral or any  
14 alleged unjustified impairment of recourse against Peregrine or any other person or entity liable  
15 on any obligations guaranteed hereby (whether such impairment is alleged to be intentional,  
16 reckless, negligent or otherwise).

17 3.1.4 Waives any claim or circumstance which constitutes a legal or equitable  
18 discharge of a guarantor or surety.

19 3.2 Representations by the Guarantors.

20 3.2.1 The death of a Guarantor shall not revoke this Guaranty as to such  
21 Guarantor unless and until written notice thereof is actually received by the City and until all  
22 obligations of such Guarantor under this Guaranty have been performed by such Guarantor's  
23 estate or heirs.

24 3.2.2 Each Guarantor: (a) is now and at all times during the term hereof shall be  
25 generally paying his debts as they mature; (b) now owns, and at all times during the term hereof  
26 shall own, property which, at a fair valuation, is greater than the sum of his debts; and (c) now  
27 has and at all times during the term hereof shall have capital sufficient to carry on his business  
28 and personal affairs.

29 3.2.3 This Guaranty has been duly and validly executed and delivered by each  
30 Guarantor and constitutes the legal, valid and binding obligations of the Guarantors, jointly and  
31 severally, enforceable against the Guarantors in accordance with its terms.

32 3.3 Modifications. In addition to but not in limitation of the foregoing, the City may,  
33 at any time and from time to time, without the consent of, or notice or responsibility to the  
34 Guarantors, and without impairing or releasing the obligations of the Guarantors (with  
35 Peregrine's consent where otherwise required): (a) modify or amend the manner, place or terms  
36 of payment or performance, or change or extend the time of payment or performance, or modify  
37 any of the obligations of Peregrine under the Redevelopment Agreement (and, if so required  
38 under the Redevelopment Agreement, with Peregrine's consent) and this Guaranty shall apply to

1 such obligations of Peregrine, as so modified, amended, or extended in any manner (subject to  
2 the Obligation Cap); (b) exercise or refrain from exercising, in any manner and in any order, any  
3 remedy it may have with respect to any obligations of Peregrine; (c) exercise or refrain from  
4 exercising any rights against Peregrine or others, including the Guarantors, or otherwise in any  
5 way act or refrain from acting; and (d) settle or compromise any obligations or liabilities of  
6 Peregrine.

7           3.4    No Implied Waiver. No delay on the part of the City in exercising any of its rights  
8 under the Redevelopment Agreement or this Guaranty or otherwise, and no partial or single  
9 exercise of such rights, and no action or failure to act by the City, with or without notice to the  
10 Guarantors or anyone else, shall constitute a waiver of such right, or shall effect or impair this  
11 Guaranty.

12           3.5    Primary Guaranty. This Guaranty is, and remains until fully satisfied, a primary  
13 obligation of the Guarantors.

14           3.6    Information Regarding Peregrine. The City is not required to disclose to the  
15 Guarantors any information with respect to the financial condition or character of Peregrine, any  
16 collateral, other guarantees, or any action or non-action on the part of the City or Peregrine or any  
17 person connected with the credit or collateral thereto. Each Guarantor represents that he is fully  
18 aware of the financial condition of Peregrine and is in such a position by virtue of its relationship  
19 to Peregrine to obtain all necessary financial information concerning Peregrine's business. Each  
20 Guarantor shall assume the responsibility for keeping himself informed of the status of  
21 Peregrine's performance of Peregrine's obligations under the Redevelopment Agreement, and the  
22 City shall have no duty to advise either Guarantor of any information now or hereafter known  
23 regarding Peregrine, the Project or the Project Improvements.

24           3.7    Direct Enforcement. The City shall not be required to first resort to performance  
25 from Peregrine, other guarantors, if any, or other persons or corporations, their properties or  
26 estates, or to any collateral security, property, liens, mortgages, or other rights or remedies  
27 whatsoever, prior to requiring the Guarantors to fully satisfy the Guaranteed Obligations.

28           3.8    Peregrine Indebtedness. Any indebtedness of Peregrine now or hereafter owed to  
29 the Guarantors is hereby subordinated to Peregrine's obligations under the Redevelopment  
30 Agreement (to the extent guaranteed by the Guarantors), and, such indebtedness of Peregrine to  
31 the Guarantors, if the City so requests, shall be collected, enforced, and received by the  
32 Guarantors as trustee for the City and be paid over to the City on account of obligations of  
33 Peregrine to the City under the Redevelopment Agreement but without reducing or affecting in  
34 any manner the liability of the Guarantors herein; *provided, however*, that so long as Peregrine is  
35 not in default under the Redevelopment Agreement, Peregrine shall be entitled to pay any  
36 indebtedness to the Guarantors and the Guarantors shall be entitled to receive and retain such  
37 payment solely for the Guarantors' own account.

38           3.9    Waiver of Subrogation by Guarantors.

39           3.9.1 Waiver. Each Guarantor waives any claim or other right now existing or  
40 hereafter acquired against Peregrine, or any other person who is primarily or contingently liable  
41 on the obligations of Peregrine under the Redevelopment Agreement, that arises from the

1 Guarantors' performance of their obligations under this Guaranty, including, without limitation,  
2 any right of contribution, indemnity, subrogation, reimbursement, exoneration, and the right to  
3 participate in any claim or remedy of the City against Peregrine or any collateral security  
4 therefore which the City now has or hereafter acquires, whether or not such claim, right or  
5 remedy arises under contract, law or equity.

6 3.9.2 Reinstatement. The obligations of the Guarantors shall be automatically  
7 reinstated if and to the extent that for any reason any payment by or on behalf of Peregrine is  
8 rescinded or must be otherwise restored by any holder of any such obligation, whether as a result  
9 of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that  
10 it will indemnify the City on demand for all reasonable payments, costs and expenses, including  
11 legal fees, incurred by the City in connection with such rescission or restoration. If payment is  
12 made by Peregrine on an obligation guaranteed hereby and thereafter the City is forced to remit  
13 the amount of that payment to Peregrine's trustee in bankruptcy or a similar person under any  
14 federal or state bankruptcy law or law for the relief of debtors, Peregrine's obligation shall be  
15 considered unsatisfied for the purpose of enforcement of this Guaranty.

16 3.10 Claims in Bankruptcy. Each Guarantor hereby expressly and irrevocably releases  
17 and waives any and all "claims" (as now or hereafter defined in the Code) of any nature  
18 whatsoever, whether known or unknown and whether now existing or hereafter acquired, against  
19 Peregrine or the estate of Peregrine in any existing or future bankruptcy case in which the debtors  
20 include Peregrine or any other person or entity with respect to which such Guarantor is an  
21 "insider" (as defined in the Code), to the extent such claims in any manner are related to or arise  
22 out of this Guaranty or any obligations guaranteed hereby (including but not limited to fixed or  
23 contingent claims based on subrogation, indemnity, reimbursement, contribution, or contract).

24 3.11 Exercise of Remedies by the City. Each Guarantor consents to the City at any  
25 time exercising, in its sole discretion, any right or remedy or any combination thereof which may  
26 then be available to the City against Peregrine under the Redevelopment Agreement. The  
27 exercise of any such rights or remedies shall not constitute a legal or equitable discharge of either  
28 or both Guarantors. It is each Guarantor's intent and purpose that, except as otherwise provided  
29 in this Section 3, the obligations of such Guarantor shall be absolute, independent, and  
30 unconditional under any and all circumstances.

31 3.12 Impact of Peregrine Bankruptcy. The liability of the Guarantors pursuant to this  
32 Guaranty shall not be affected in any way by the institution of any proceedings involving  
33 Peregrine under the Code or by any action taken in any such proceedings.

#### 34 4. REMEDIES

35 Upon a breach of this Guaranty by the Guarantors, the City shall be entitled to pursue all  
36 legal remedies against the Guarantors; provided, however, that the City shall be limited to  
37 recovery of monetary damages only, which shall in no event exceed the Obligation Cap.

1 5. GENERAL PROVISIONS

2 5.1 Integration. This Guaranty contains the entire agreement and understanding of the  
3 City and the Guarantors with respect to the matters described herein and supersedes all prior and  
4 contemporaneous agreements between the City and the Guarantors with respect to such matters.

5 5.2 Amendment. This Guaranty may not be modified or amended except in writing  
6 and signed by the City and the Guarantors.

7 5.3 Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever  
8 (including any proceeding under the Code) is instituted in connection with any controversy  
9 arising out of this Guaranty or to interpret or enforce any rights hereunder, the prevailing party  
10 shall be entitled to recover its attorneys', accountants', and other experts' fees and all other fees,  
11 costs, and expenses actually incurred and reasonably necessary in connection therewith, as  
12 determined by the court at trial or on any appeal or review, in addition to all other amounts  
13 provided by law.

14 5.4 Construction and Interpretation. The headings or titles of the sections of this  
15 Guaranty are intended for ease of reference only and shall have no effect whatsoever on the  
16 construction or interpretation of any provision of this Guaranty.

17 5.5 Waiver. Failure of the City at any time to require performance of any provision of  
18 this Guaranty shall not limit the City's right to enforce such provision, nor shall any waiver of  
19 any breach of any provision of this Guaranty constitute a waiver of any succeeding breach of  
20 such provision or a waiver of such provision itself. Any waiver of any provision of this Guaranty  
21 shall be effective only if set forth in writing and signed by the City.

22 5.6 Severability. If any term or provision of this Guaranty or the application thereof  
23 to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of  
24 this Guaranty and the application of such term or provision to persons or circumstances other  
25 than those as to which it is held invalid or unenforceable shall not be affected thereby, and each  
26 term or provision of this Guaranty shall be valid and enforceable to the fullest extent permitted  
27 by law.

28 5.7 Notices. All notices and other communications hereunder shall be in writing and  
29 shall be deemed given upon the earlier of actual delivery or refusal of a party to accept delivery  
30 thereof if sent with all postage and delivery charges prepaid by (a) personally delivery, (b)  
31 messenger service, (c) overnight courier service, (d) facsimile, if simultaneously transmitted by  
32 another means allowed hereunder, or (e) if dispatched by registered or certified mail, return  
33 receipt requested, and addressed as follows:

34 If to the City: City of Portland Auditor  
35 1220 SW Fifth Avenue, 1st Floor  
36 Portland, Oregon 97204  
37 Attn: City Auditor  
38 Fax No.: 503-823-4571  
39 Confirmation No.: 503-823-4078

1 With a copy to: Office of the City Attorney  
 2 City of Portland, Oregon  
 3 1220 SW Fifth Avenue  
 4 Portland, Oregon 97204  
 5 Attn: City Attorney  
 6 Fax No.: 503-823-3089  
 7 Confirmation No.: 503-248-4047

8 And to: Office of Management and Finance  
 9 City of Portland  
 10 1120 S.W. Fifth Avenue, 12th Floor  
 11 Portland, Oregon 97204  
 12 Attn: Chief Administrative Officer  
 13 Fax No.: 503-823-5384  
 14 Confirmation No.: 503-823-5288

15 And to: Ball Janik LLP  
 16 One Main Place  
 17 101 SW Main Street, Suite 1100  
 18 Portland, Oregon 97204  
 19 Attn: Steve Janik/Dina Alexander  
 20 Fax No.: 503-295-1058  
 21 Confirmation No.: 503-228-2525

22 If to Guarantor: c/o Robbins & Associates  
 23 333 W. Wacker Drive, Suite 830  
 24 Chicago, IL 60606  
 25 Fax No.: \_\_\_\_\_  
 26 Confirmation No.: \_\_\_\_\_

27  
 28 With a copy to: Mayer Brown LLP  
 29 71 S. Wacker Drive  
 30 Chicago, IL 60606  
 31 Attn.: Dan Luther, Esq.  
 32 Fax No.: \_\_\_\_\_  
 33 Confirmation No.: \_\_\_\_\_

34 Each party may by notice to the other party specify a different address or fax or confirmation  
 35 number for subsequent notice purposes. Notice may be sent by counsel for either party.

36 5.8 Binding Effect. This Guaranty and each of its provisions shall be binding upon  
 37 the Guarantors and upon the heirs, estate, personal representatives, and successors and assigns of  
 38 the Guarantors, and each of them, respectively, and shall inure to the benefit of the City, its  
 39 successors and assigns.

1           5.9    Governing Law. This Guaranty shall be governed by and construed in accordance  
 2 with the laws of the State of Oregon. Any litigation arising under this Guaranty shall be litigated  
 3 in Multnomah County, Oregon.

4  
 5                    **GUARANTOR:**

\_\_\_\_\_

**HENRY MERRITT PAULSON, JR.**

6  
 7  
 8  
 9                    \_\_\_\_\_

**HENRY MERRITT PAULSON, III**

10                   **THE CITY:**

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

11  
 12  
 13  
 14                    By: \_\_\_\_\_

15                                    The Honorable Sam Adams, Mayor

16                    By: \_\_\_\_\_

17                                    The Honorable LaVonne Griffin-Lavade,

18                                    City of Portland Auditor

19                    **APPROVED AS TO FORM:**

20  
 21                    By: \_\_\_\_\_

22                                    \_\_\_\_\_, City Attorney

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## COMPLETION GUARANTY

PARTIES:           **HENRY MERRITT PAULSON, JR.**, an individual,  
and **HENRY MERRITT PAULSON III**, an individual (each, a “Guarantor”  
and collectively, the “Guarantors”); and

**CITY OF PORTLAND**, a municipal corporation of the State of  
Oregon (the “City”)

EFFECTIVE DATE: \_\_\_\_\_, 2010

### BACKGROUND

A.       The City and Peregrine Sports, LLC (“Peregrine”) have entered into a Stadium Redevelopment Agreement (the “Redevelopment Agreement”) dated as of the date of this Completion Guaranty (“Guaranty”) in connection with the renovation of PGE Park for use as a stadium for Major League Soccer (the “Project”).

B.       Henry Merritt Paulson, III is the Manager of Peregrine, and Henry Merritt Paulson, Jr. is a member of Peregrine. This Guaranty is entered into pursuant to Section 21.1.1 of the Redevelopment Agreement.

C.       All capitalized words in this Guaranty shall have the meaning as set forth in the Redevelopment Agreement unless a different meaning is specifically set forth in this Guaranty.

In consideration of the execution and delivery by the City of the Redevelopment Agreement and the Related Agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors and the City agree as follows:

#### 1.       COMPLETION GUARANTY

1.1     Notice to Guarantor To Perform. The City shall be entitled to give notice to either Guarantor requesting that either or both Guarantors commence to perform their obligations under this Guaranty upon the happening of any one or more of the following events:

1.1.1   Peregrine commences a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor’s relief or such a case is commenced against Peregrine by any person and is not dismissed within sixty (60) days.

1.1.2   Peregrine consents to the appointment of a receiver, trustee, or custodian of any of Peregrine’s assets, or Peregrine makes a general assignment for the benefit of its creditors.

1.1.3   Work ceases on the Project Site for more than thirty (30) consecutive days or Peregrine exhibits a pattern of substantial work stoppages over a six (6) month period, in each case not resulting from an Excused Delays under the Redevelopment Agreement, act or omission

1 of the City or breach by the City of the Redevelopment Agreement or any of the Related  
2 Agreements.

3 1.1.4 Peregrine fails to Substantially Complete the Project Improvements by the  
4 date required by the Redevelopment Agreement, which date is subject to Excused Delays as  
5 described in the Redevelopment Agreement (the "Completion Date"), or Peregrine fails to  
6 Finally Complete the Project Improvements as required by the Redevelopment Agreement and, in  
7 either instance, the City has terminated the Redevelopment Agreement.

8 1.1.5 Peregrine gives notice to the City that it does not intend to complete the  
9 Project Improvements.

10 1.2 Guarantors' Obligations Under Completion Guaranty. This Guaranty is an  
11 absolute, irrevocable, present and continuing guaranty of payment and performance of the  
12 obligations set forth herein and not of collection, up to the Obligation Cap (as defined below).

13 1.2.1 Each Guarantor, jointly and severally, hereby absolutely, irrevocably, and  
14 unconditionally guarantees, as a principal obligor and not as a surety, to the City: (a) the  
15 Substantial Completion of the Project Improvements and the Final Completion of the Project  
16 Improvements, free and clear of all claims for mechanic's and materialmen's liens (except those  
17 arising out of valid claims against the City) and in accordance with: (i) all applicable Laws; (ii)  
18 the Drawings and Specifications; and (iii) the applicable provisions of the Redevelopment  
19 Agreement; (b) the payment of all amounts necessary to complete the Project Improvements and  
20 to pay all other obligations of the Guarantors under this Guaranty; (c) the payment of all  
21 Enforcement Costs (as hereinafter defined); and (d) the payment of all losses, costs, expenses,  
22 liabilities and damages incurred by the City arising from any failure of the Guarantors to  
23 complete the Project Improvements in accordance with the terms of this Guaranty by the  
24 Completion Date. "Enforcement Costs" means any and all reasonable attorneys' fees, costs and  
25 expenses, including without limitation, court costs, filing fees, and all other costs and expenses  
26 reasonably incurred in connection with enforcement of this Guaranty.

27 1.2.2 The obligations described in Section 1.2.1 above are the "Guaranteed  
28 Obligations" of the Guarantors. The Guarantors' liability with respect to the Guaranteed  
29 Obligations and any and all other obligations under this Guaranty shall not under any  
30 circumstances exceed in the aggregate, with respect to both Guarantors, the maximum amount of  
31 \$20,000,000 (the "Obligation Cap").

32 1.2.3 If the Guarantors fail to commence and pursue diligently the performance  
33 of the Guaranteed Obligations within thirty (30) days after receipt of written notice from the City  
34 demanding the performance of either or both Guarantors, then, either before or after pursuing any  
35 other remedy against the Guarantors or Peregrine, the City shall have the right, but not the  
36 obligation, to complete the Project Improvements or call upon any other reputable parties to  
37 complete the Project Improvements (including the right to assume from Peregrine the General  
38 Construction Contract or replace the Contractor in accordance with the terms thereof), with such  
39 changes or modifications to the Drawings and Specifications or the Project Budget as the City  
40 deems necessary in the City's reasonable discretion, and the City shall have the right to expend  
41 such sums as the City in its sole and exclusive discretion deems proper in order to complete the  
42 Project Improvements and to receive reimbursement from the Guarantors up to the Obligation

1 Cap. During the course of any construction undertaken by the City or by any other party on  
2 behalf of the City, the Guarantors shall pay on demand, up to the Obligation Cap, any and all  
3 amounts due to contractors, subcontractors and material suppliers and for permits, licenses,  
4 entitlements, bonds, taxes, assessments and other items necessary or desirable in connection  
5 therewith.

6 1.2.4 If the City has sent the Guarantors written notice requiring either or both  
7 Guarantors to perform the Guaranteed Obligations, the City shall make available to the  
8 Guarantors the balance of the undisbursed Public Contribution pursuant to and in accordance  
9 with the Redevelopment Agreement solely for the purposes of completing the Project  
10 Improvements and fulfilling their other obligations under this Guaranty, so long as: (a) no  
11 default exists under this Guaranty; (b) the Guarantors have expressly reaffirmed all obligations  
12 assumed by them under this Guaranty and perform all obligations under this Guaranty up to the  
13 time of completion of the Project Improvements; and (c) all other conditions of the  
14 Redevelopment Agreement to the disbursement of such proceeds are satisfied.

15 1.3 Term of Guarantors' Obligations. Once the Guarantors have been obligated to  
16 commence performance under the Guaranty pursuant to Section 1.1, the Guarantors' obligation  
17 to perform and this Guaranty shall terminate upon the earliest of (i) Final Completion of the  
18 Project and (ii) payment by the Guarantors in an amount equal to the Obligation Cap. If the  
19 Guarantors have not been obligated to commence performance under this Guaranty pursuant to  
20 Section 1.1 and Peregrine has Substantially Completed the Project Improvements, then the  
21 Guarantors' obligations under the Guaranty shall cease and the City shall promptly upon written  
22 request execute a written release of the Guarantors' obligations under this Guaranty.

## 23 2. LIMITATION OF LIABILITY

24 Notwithstanding anything to the contrary in this Guaranty:

25 2.1 Performance Limitation. The Guarantors' obligations under the Guaranty are  
26 solely the Guaranteed Obligations, and the Guarantors shall have no obligation to perform any of  
27 Peregrine's other obligations under the Redevelopment Agreement or any of the Related  
28 Agreements.

29 2.2 City's Obligation To Perform. The Guarantors' obligations under this Guaranty to  
30 the City are subject to there not being a City Event of Default under the Redevelopment  
31 Agreement or any of the Related Agreements of (a) any of its monetary obligations relating to the  
32 funding of the Public Contribution and City Costs, when and as they become due, which will  
33 materially and adversely affect the Guarantors in the fulfillment of their obligation under this  
34 Guaranty, or (b) any of the City's non-monetary obligations which will materially and adversely  
35 affect the ability of the Guarantors to fulfill their obligations under this Guaranty.

36 2.3 Other Defenses. The Guarantors shall be entitled to maintain all defenses to  
37 performance of this Guaranty which Peregrine is entitled to assert as to its obligations, except for  
38 any defense: (a) arising by reason of Peregrine being the debtor in a case arising under the  
39 United States Bankruptcy Code (the "Code"); (b) arising by reason of Peregrine's lack of  
40 capacity or authority to enter into the Redevelopment Agreement or perform its obligations

1 thereunder; or (c) already raised by Peregrine and adjudicated, mediated or arbitrated as provided  
2 in the Redevelopment Agreement.

3 3. ADDITIONAL GUARANTY PROVISIONS

4 3.1 Waivers by the Guarantors. Each Guarantor unconditionally and irrevocably, to  
5 the extent legally permitted:

6 3.1.1 Waives any requirement that the City, in the event of default by Peregrine,  
7 first make any demand, or seek to enforce remedies against Peregrine before seeking to enforce  
8 this Guaranty.

9 3.1.2 Waives any defense other than (a) those defenses that each is permitted to  
10 maintain pursuant to Section 2.3 above, (b) the defense that Final Completion of the Project  
11 Improvements has occurred, and (c) the defense that the Guarantors have already made payments  
12 up to the amount of the Obligation Cap.

13 3.1.3 Waives any claim based on any alleged impairment of any collateral or any  
14 alleged unjustified impairment of recourse against Peregrine or any other person or entity liable  
15 on any obligations guaranteed hereby (whether such impairment is alleged to be intentional,  
16 reckless, negligent or otherwise).

17 3.1.4 Waives any claim or circumstance which constitutes a legal or equitable  
18 discharge of a guarantor or surety.

19 3.2 Representations by the Guarantors.

20 3.2.1 The death of a Guarantor shall not revoke this Guaranty as to such  
21 Guarantor unless and until written notice thereof is actually received by the City and until all  
22 obligations of such Guarantor under this Guaranty have been performed by such Guarantor's  
23 estate or heirs.

24 3.2.2 Each Guarantor: (a) is now and at all times during the term hereof shall be  
25 generally paying his debts as they mature; (b) now owns, and at all times during the term hereof  
26 shall own, property which, at a fair valuation, is greater than the sum of his debts; and (c) now  
27 has and at all times during the term hereof shall have capital sufficient to carry on his business  
28 and personal affairs.

29 3.2.3 This Guaranty has been duly and validly executed and delivered by each  
30 Guarantor and constitutes the legal, valid and binding obligations of the Guarantors, jointly and  
31 severally, enforceable against the Guarantors in accordance with its terms.

32 3.3 Modifications. In addition to but not in limitation of the foregoing, the City may,  
33 at any time and from time to time, without the consent of, or notice or responsibility to the  
34 Guarantors, and without impairing or releasing the obligations of the Guarantors (with  
35 Peregrine's consent where otherwise required): (a) modify or amend the manner, place or terms  
36 of payment or performance, or change or extend the time of payment or performance, or modify  
37 any of the obligations of Peregrine under the Redevelopment Agreement (and, if so required  
38 under the Redevelopment Agreement, with Peregrine's consent) and this Guaranty shall apply to

1 such obligations of Peregrine, as so modified, amended, or extended in any manner (subject to  
2 the Obligation Cap); (b) exercise or refrain from exercising, in any manner and in any order, any  
3 remedy it may have with respect to any obligations of Peregrine; (c) exercise or refrain from  
4 exercising any rights against Peregrine or others, including the Guarantors, or otherwise in any  
5 way act or refrain from acting; and (d) settle or compromise any obligations or liabilities of  
6 Peregrine.

7       3.4 No Implied Waiver. No delay on the part of the City in exercising any of its rights  
8 under the Redevelopment Agreement or this Guaranty or otherwise, and no partial or single  
9 exercise of such rights, and no action or failure to act by the City, with or without notice to the  
10 Guarantors or anyone else, shall constitute a waiver of such right, or shall effect or impair this  
11 Guaranty.

12       3.5 Primary Guaranty. This Guaranty is, and remains until fully satisfied, a primary  
13 obligation of the Guarantors.

14       3.6 Information Regarding Peregrine. The City is not required to disclose to the  
15 Guarantors any information with respect to the financial condition or character of Peregrine, any  
16 collateral, other guarantees, or any action or non-action on the part of the City or Peregrine or any  
17 person connected with the credit or collateral thereto. Each Guarantor represents that he is fully  
18 aware of the financial condition of Peregrine and is in such a position by virtue of its relationship  
19 to Peregrine to obtain all necessary financial information concerning Peregrine's business. Each  
20 Guarantor shall assume the responsibility for keeping himself informed of the status of  
21 Peregrine's performance of Peregrine's obligations under the Redevelopment Agreement, and the  
22 City shall have no duty to advise either Guarantor of any information now or hereafter known  
23 regarding Peregrine, the Project or the Project Improvements.

24       3.7 Direct Enforcement. The City shall not be required to first resort to performance  
25 from Peregrine, other guarantors, if any, or other persons or corporations, their properties or  
26 estates, or to any collateral security, property, liens, mortgages, or other rights or remedies  
27 whatsoever, prior to requiring the Guarantors to fully satisfy the Guaranteed Obligations.

28       3.8 Peregrine Indebtedness. Any indebtedness of Peregrine now or hereafter owed to  
29 the Guarantors is hereby subordinated to Peregrine's obligations under the Redevelopment  
30 Agreement (to the extent guaranteed by the Guarantors), and, such indebtedness of Peregrine to  
31 the Guarantors, if the City so requests, shall be collected, enforced, and received by the  
32 Guarantors as trustee for the City and be paid over to the City on account of obligations of  
33 Peregrine to the City under the Redevelopment Agreement but without reducing or affecting in  
34 any manner the liability of the Guarantors herein; *provided, however*, that so long as Peregrine is  
35 not in default under the Redevelopment Agreement, Peregrine shall be entitled to pay any  
36 indebtedness to the Guarantors and the Guarantors shall be entitled to receive and retain such  
37 payment solely for the Guarantors' own account.

38       3.9 Waiver of Subrogation by Guarantors.

39               3.9.1 Waiver. Each Guarantor waives any claim or other right now existing or  
40 hereafter acquired against Peregrine, or any other person who is primarily or contingently liable  
41 on the obligations of Peregrine under the Redevelopment Agreement, that arises from the

1 Guarantors' performance of their obligations under this Guaranty, including, without limitation,  
2 any right of contribution, indemnity, subrogation, reimbursement, exoneration, and the right to  
3 participate in any claim or remedy of the City against Peregrine or any collateral security  
4 therefore which the City now has or hereafter acquires, whether or not such claim, right or  
5 remedy arises under contract, law or equity.

6           3.9.2 Reinstatement. The obligations of the Guarantors shall be automatically  
7 reinstated if and to the extent that for any reason any payment by or on behalf of Peregrine is  
8 rescinded or must be otherwise restored by any holder of any such obligation, whether as a result  
9 of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that  
10 it will indemnify the City on demand for all reasonable payments, costs and expenses, including  
11 legal fees, incurred by the City in connection with such rescission or restoration. If payment is  
12 made by Peregrine on an obligation guaranteed hereby and thereafter the City is forced to remit  
13 the amount of that payment to Peregrine's trustee in bankruptcy or a similar person under any  
14 federal or state bankruptcy law or law for the relief of debtors, Peregrine's obligation shall be  
15 considered unsatisfied for the purpose of enforcement of this Guaranty.

16           3.10 Claims in Bankruptcy. Each Guarantor hereby expressly and irrevocably releases  
17 and waives any and all "claims" (as now or hereafter defined in the Code) of any nature  
18 whatsoever, whether known or unknown and whether now existing or hereafter acquired, against  
19 Peregrine or the estate of Peregrine in any existing or future bankruptcy case in which the debtors  
20 include Peregrine or any other person or entity with respect to which such Guarantor is an  
21 "insider" (as defined in the Code), to the extent such claims in any manner are related to or arise  
22 out of this Guaranty or any obligations guaranteed hereby (including but not limited to fixed or  
23 contingent claims based on subrogation, indemnity, reimbursement, contribution, or contract).

24           3.11 Exercise of Remedies by the City. Each Guarantor consents to the City at any  
25 time exercising, in its sole discretion, any right or remedy or any combination thereof which may  
26 then be available to the City against Peregrine under the Redevelopment Agreement. The  
27 exercise of any such rights or remedies shall not constitute a legal or equitable discharge of either  
28 or both Guarantors. It is each Guarantor's intent and purpose that, except as otherwise provided  
29 in this Section 3, the obligations of such Guarantor shall be absolute, independent, and  
30 unconditional under any and all circumstances.

31           3.12 Impact of Peregrine Bankruptcy. The liability of the Guarantors pursuant to this  
32 Guaranty shall not be affected in any way by the institution of any proceedings involving  
33 Peregrine under the Code or by any action taken in any such proceedings.

#### 34 4. REMEDIES

35           Upon a breach of this Guaranty by the Guarantors, the City shall be entitled to pursue all  
36 legal remedies against the Guarantors; provided, however, that the City shall be limited to  
37 recovery of monetary damages only, which shall in no event exceed the Obligation Cap.

1 5. GENERAL PROVISIONS

2 5.1 Integration. This Guaranty contains the entire agreement and understanding of the  
3 City and the Guarantors with respect to the matters described herein and supersedes all prior and  
4 contemporaneous agreements between the City and the Guarantors with respect to such matters.

5 5.2 Amendment. This Guaranty may not be modified or amended except in writing  
6 and signed by the City and the Guarantors.

7 5.3 Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever  
8 (including any proceeding under the Code) is instituted in connection with any controversy  
9 arising out of this Guaranty or to interpret or enforce any rights hereunder, the prevailing party  
10 shall be entitled to recover its attorneys', accountants', and other experts' fees and all other fees,  
11 costs, and expenses actually incurred and reasonably necessary in connection therewith, as  
12 determined by the court at trial or on any appeal or review, in addition to all other amounts  
13 provided by law.

14 5.4 Construction and Interpretation. The headings or titles of the sections of this  
15 Guaranty are intended for ease of reference only and shall have no effect whatsoever on the  
16 construction or interpretation of any provision of this Guaranty.

17 5.5 Waiver. Failure of the City at any time to require performance of any provision of  
18 this Guaranty shall not limit the City's right to enforce such provision, nor shall any waiver of  
19 any breach of any provision of this Guaranty constitute a waiver of any succeeding breach of  
20 such provision or a waiver of such provision itself. Any waiver of any provision of this Guaranty  
21 shall be effective only if set forth in writing and signed by the City.

22 5.6 Severability. If any term or provision of this Guaranty or the application thereof  
23 to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of  
24 this Guaranty and the application of such term or provision to persons or circumstances other  
25 than those as to which it is held invalid or unenforceable shall not be affected thereby, and each  
26 term or provision of this Guaranty shall be valid and enforceable to the fullest extent permitted  
27 by law.

28 5.7 Notices. All notices and other communications hereunder shall be in writing and  
29 shall be deemed given upon the earlier of actual delivery or refusal of a party to accept delivery  
30 thereof if sent with all postage and delivery charges prepaid by (a) personally delivery, (b)  
31 messenger service, (c) overnight courier service, (d) facsimile, if simultaneously transmitted by  
32 another means allowed hereunder, or (e) if dispatched by registered or certified mail, return  
33 receipt requested, and addressed as follows:

34 If to the City: City of Portland Auditor  
35 1220 SW Fifth Avenue, 1st Floor  
36 Portland, Oregon 97204  
37 Attn: City Auditor  
38 Fax No.: 503-823-4571  
39 Confirmation No.: 503-823-4078

1           With a copy to:       Office of the City Attorney  
2                                   City of Portland, Oregon  
3                                   1220 SW Fifth Avenue  
4                                   Portland, Oregon 97204  
5                                   Attn: City Attorney  
6                                   Fax No.: 503-823-3089  
7                                   Confirmation No.: 503-248-4047

8           And to:               Office of Management and Finance  
9                                   City of Portland  
10                                  1120 S.W. Fifth Avenue, 12th Floor  
11                                  Portland, Oregon 97204  
12                                  Attn: Chief Administrative Officer  
13                                  Fax No.: 503-823-5384  
14                                  Confirmation No.: 503-823-5288

15          And to:               Ball Janik LLP  
16                                   One Main Place  
17                                   101 SW Main Street, Suite 1100  
18                                   Portland, Oregon 97204  
19                                   Attn: Steve Janik/Dina Alexander  
20                                   Fax No.: 503-295-1058  
21                                   Confirmation No.: 503-228-2525

22          If to Guarantor:      c/o Robbins & Associates  
23                                   333 W. Wacker Drive, Suite 830  
24                                   Chicago, IL 60606  
25                                   Fax No.: 312-609-1105  
26                                   Confirmation No.: 312-609-1100

27

28          With a copy to:       Mayer Brown LLP  
29                                   71 S. Wacker Drive  
30                                   Chicago, IL 60606  
31                                   Attn.: Dan Luther, Esq.  
32                                   Fax No.: 312-706-9216  
33                                   Confirmation No.: 312-782-0600

34       Each party may by notice to the other party specify a different address or fax or confirmation  
35       number for subsequent notice purposes. Notice may be sent by counsel for either party.

36           5.8    Binding Effect. This Guaranty and each of its provisions shall be binding upon  
37       the Guarantors and upon the heirs, estate, personal representatives, and successors and assigns of  
38       the Guarantors, and each of them, respectively, and shall inure to the benefit of the City, its  
39       successors and assigns.



1           5.9    Governing Law. This Guaranty shall be governed by and construed in accordance  
2 with the laws of the State of Oregon. Any litigation arising under this Guaranty shall be litigated  
3 in Multnomah County, Oregon.  
4

5                    GUARANTOR:

\_\_\_\_\_

**HENRY MERRITT PAULSON, JR.**

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**HENRY MERRITT PAULSON, III**

10                   THE CITY:

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

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By: \_\_\_\_\_  
The Honorable Sam Adams, Mayor

16

17

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By: \_\_\_\_\_  
The Honorable LaVonne Griffin-Lavade,  
City of Portland Auditor

19

20

21

22

23

APPROVED AS TO FORM:

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

**EXHIBIT 3.1**

## STATE LAW REQUIREMENTS

Oregon Revised Statutes (“ORS”) Chapters 279A, 279B and 279C require every public contract to contain certain provisions. The Contractor shall comply with all applicable provisions of the following Laws. To the extent there is a conflict between the following provisions and other provisions of the Agreement or the General Conditions, the Contractor shall bring such conflict to the attention of the Owner.

- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor’s surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is

subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its

subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS279C.515 (2).

- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.
- Pursuant to ORS 279C.170, the following federal, state and local agencies have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. The Contractor shall comply with all applicable ordinances and regulations of the following agencies:

- (1) Federal Agencies:
  - a. Agriculture, Department of:
    - 1. Forest Service
    - 2. Natural Resources Conservation Service
  - b. Army, Department of the:
    - 1. Engineers, Corps of
  - c. Commerce, Department of
    - 1. National Oceanic and Atmospheric Administration
    - 2. National Marine Fisheries Service
  - d. Homeland Security, Department of:
    - 1. US Coast Guard
  - e. Interior, Department of:
    - 1. Heritage, Conservation and Recreation Service
    - 2. Indian Affairs, Bureau of
    - 3. Land Management, Bureau of
    - 4. Reclamation, Bureau of
    - 5. Surface Mining, Reclamation and Enforcement, Office of
  - f. US Fish and Wildlife Service
  - g. Labor, Department of:
    - 1. Occupational Safety and Health Administration

2. Mine Safety and Health Administration
- h. Transportation, Department of:
  1. Federal Highway Administration
- (2) Oregon Tribal Governments:
  - a. Warm Springs, Confederated Tribes of
- (3) State of Oregon Agencies:
  - a. Agriculture, Department of
    1. Natural Resources Division
    2. Soil and Water Conservation Division
  - b. Consumer and Business Services, Department of
    1. Insurance Division
    2. Oregon Occupational Safety and Health Division
  - c. Energy, Department of
  - d. Environmental Quality, Department of
  - e. Fish and Wildlife, Department of
  - f. Forestry, Department of
  - g. Geology and Mineral Industries, Department of
  - h. Human Resources, Department of
  - i. Insurance and Finance, Department of
  - j. Oregon Occupational Safety and Health Division
  - k. Labor and Industries, Bureau of
  - l. Land Conservation and Development Department
  - m. State Lands, Division of
  - n. Water Resources Department
- (4) Local Agencies:

- a. City Council
- b. County Courts
- c. County Commissioners
- d. Metro
- e. Planning Commissions
- f. Port Districts
- g. Public and Private Utilities:
  - 1. County Service Districts
  - 2. Fire Protection Districts
  - 3. Irrigation Districts
  - 4. Lighting Districts
  - 5. Metropolitan Service Districts
  - 6. Sanitary Districts
  - 7. Water Districts
- h. TriMet

- Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bonds requirements.
- Contractor is subject to claims under ORS 279C.600, relating to action on payment or public works bonds.
- Contractor acknowledges the statutory preferences for materials and supplies manufactured from recycled materials if economically feasible, pursuant to ORS 279B.280 and recycled oil pursuant to ORS 279B.275.
- The Contractor shall not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.005.
- The Contractor shall certify compliance with Oregon tax laws in accordance with ORS 305.385.
- Contractor will cooperate with the Owner to prepare data for preparation of the Post-Project Evaluation Report required by ORS 279C.355.
- The Contractor will certify that all subcontractors performing work described in ORS 701.005(2) (i.e., construction work) shall be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to

701.055 before the subcontractors commence work under the contract.



Exhibit 3.2.1  
Retained Parties

Peregrine PDA Retained Parties

ICON Venue Group, LLC	Developers Representative Agreement
Ellerbe Becket Architects	Design Services Agreement

Conditionally Approved Retained Parties

Turner Construction Company	General Construction Contract
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## EXHIBIT 3.2.5

**PGE PARK STADIUM REDEVELOPMENT AGREEMENT  
RETAINED PARTY CONTRACT REQUIREMENTS**

A. Construction Contracts shall contain the clauses set forth on the attached Schedule A, and the provisions listed in Part B below. In addition, construction contracts shall contain the following provisions:

1. Compliance with the contractor's Outreach Plan, if any, including the Subcontracting Plan and Monthly Subcontractor Payment and Utilization Reports;

2. The contractor shall comply with the alternative bidding procedures, the equal opportunity employment practices and goals and other requirements as set forth in the Exemption Ordinance, if any;

3. Unless otherwise stated in the Retained Party Contract, and approved by the City Attorney, all work product produced and all work incorporated in the Project site shall be owned by the City;

4. The contractor shall take all safety measures reasonably appropriate and necessary to protect (a) all persons at and about the Project Site from injury or damage caused by or resulting from the performance of construction; (b) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, (c) 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 Retained Party's written safety program for the Project; and (g) when use or storage of explosives or other hazardous materials 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;

5. The contractor shall participate in and comply with General Dispute Resolution provisions consistent with the Redevelopment Agreement;

6. City right to suspend and carry out work as provided in the Redevelopment Agreement;

7. Retained Party shall comply with the City's Workforce Training and Hiring Program

8. The City's representatives shall be entitled to attend all Project coordination meetings and will be entitled to attend all job walks and all progress payment review meetings;

**B. All Retained Party Contracts (including contracts for professional services and for construction) shall contain the following clauses:**

1. The Contractor shall comply with the City's Good Faith Effort Program to utilize Minority, Women, and Small Business subcontractors.
2. The Contractor 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.
3. The Contractor 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.
4. In compliance with PCC 7.02 (City Business License Code), the Contractor 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.
5. The City shall be a third-party beneficiary with the right to enforce the professional services contract;
6. The Retained Party shall indemnify the City from all Environmental Remediation Costs and City damages caused by the Release of Hazardous Materials by such retained party, its employees, agents or independent contractors;
7. All indemnification clauses shall name the City as an indemnified party;
8. 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 contract and the Project. The City shall have the right to conduct an audit for the of such documents for a period of three years after final payment;
9. Retained Party shall comply with all applicable federal, state and local laws and regulations;
10. 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 activities of Retained Party or its subcontractors, agents, or employees under the contract;
11. 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 professional negligent acts, errors or omissions of Retained Party, or its subcontractors and sub-consultants, agents or employees in performance of professional services under the contract;
12. Except as otherwise approved by the City Attorney, all work products of the Retained Party that result from a Retained Party Contract are the exclusive property of the City;

13. Retained Party agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. 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.

14. The 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 this contract must be brought in the appropriate court in Multnomah County, Oregon;

15. The Retained Party shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under the 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 contract to be subject to any claim or lien of any person without the City's prior written consent;

16. All warranties provided by the Retained Party must be assignable to the City in the case of Peregrine default;

17. All Retained Party Contracts shall be approved by the City;

18. City's review, comment or approval of Retained Party Contracts, of any documentation or date submitted by a Retained Party, or of any work performed by a Retained Party shall not excuse either party from strict performance of its obligations under the contract, nor render the City liable to either party as a result of such review, comment or approval;

19. Retained Parties shall be available for access by the City Representative and its agents to answer questions and provide information; and

20. With respect to insurance, the Retained Party shall maintain in force each of the following insurance coverage and the following provisions shall govern:

(a) General Provisions:

(1) The Retained Party shall obtain, at its own expense, the minimum insurance coverage described in (c), (d), (e) and (f) below and maintain that coverage until final acceptance of the entire project. By requiring such minimum insurance, the City does not guarantee that the insurance is sufficient to cover all the risks the Retained Party may face. Instead, the Retained Party should assess its own risks and, if it deems it appropriate and prudent, maintain higher limits, broader coverages, or both, than the coverage required by the City. The Retained Party is not relieved of any liabilities if it fails to obtain and maintain the minimum insurance required. The insurance carried by the Retained Party shall be the primary coverage and non-contributory, and any insurance maintained by the city is excess and solely for damages or losses for which the City is responsible.

(2) The contract amount includes the cost of any insurance required by the contract documents. The Retained Party is not entitled to additional compensation because it misunderstood what insurance coverage was required. Any confusion regarding what coverage is required should be brought to the City's attention prior to submission of a bid or proposal

(3) The City may, but is not required to, obtain insurance it deems prudent under the circumstances if it discovers that the insurance required by the contract documents has not been obtained or, for whatever reason, is no longer in effect. If so, City may recover the cost of obtaining that insurance from the Retained Party from any sums due, or will become due, the Retained Party on this or any other contract.

(4) All insurance shall be procured from a company, or companies, lawfully authorized to conduct business in the State of Oregon.

(b) Certificates and Review of Coverage before Contract Execution:

(1) The Retained Party shall provide the City Auditor certificates of insurance and additional insured endorsements signed by the insurance carrier showing that the coverage required by the Contract Documents with Insurance Services Office (ISO) form numbers to identify the specific coverage that has been obtained and the effective dates of the insurance policies. This shall be provided to the City before performance by a Retained Party of any work on the Project. The certificates shall contain a provision that states substantially the following: "The insurance described in this certificate shall not be canceled or materially altered without giving the City Auditor 30 days written Notice in advance of that action." Failure to comply with the reporting provisions of this Contract shall not affect the coverages provided to the City of Portland and its officers, employees and agents.

(2) The City Attorney's Office will review the certificates for approval. The City Attorney's office may reject any proposed certificate if the insurance proposed to be provided is not the same as the coverage required by the Contract Documents, may reject the certificate if it is unclear, or require that the underlying policy be presented for review. If the City Attorney's office determines that the certificates are unclear, the Retained Party shall provide revised certificates that clearly show the insurance required by the Contract Documents has been obtained. Review or approval of the City Attorney's office of any insurance certificate does not excuse the Retained Party from providing the insurance required by the Contract Documents.

(3) The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees. In addition, there shall be no cancellation, non-renewal, material change, or potential exhaustion of aggregate limits without 30 days written notice from the Retained Party or its insurer(s) to the City. The certificates shall reflect these requirements. To the extent certificates of insurance contain words to the effect that Retained Party shall "endeavor to send notice of cancellation" or similar language, Retained Party shall require its insurer(s) to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate.

(4) Any deductible in excess of \$50,000 shall be disclosed to the City in writing prior to beginning performance of any work by a the Retained Party, and is subject to City's approval.

(c) Workers' Compensation and related Insurance:

(1) The Retained Party shall provide, and require all Subcontractors to provide, Workers' Compensation coverage on a statutory basis for all persons employed in performing services under the Contract, in accordance with ORS Chapter 656, either as:

- a. A carrier-insured employer; or
- b. A self-insured employer.

(2) Proof of such coverage shall be filed with the City and maintained for the duration of the Contract. The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident, a \$500,000 disease "policy" limit, and \$100,000 disease "each employee" limit.

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

(d) Liability and Property Damage Insurance:

(1) Commercial General Liability (CGL) - Retained Party shall obtain, at Retained Party's expense, and keep in effect during the term of this Contract and as specified below, Commercial General Liability Insurance (CGL) covering bodily injury and property damage in a form and with coverages that are satisfactory to the City. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000 for each occurrence, \$1,000,000 Personal Injury/Advertising Injury; \$1,000,000 Products/Completed Operations, and; \$1,000,000 General Aggregate.

(2) Coverage Limits - The insurance shall include the following coverage: Premises/Operations, Contingent Liability/Independent Contractor; Broad Form Property Damage; Fire Liability; Contractual Liability; and Explosion, Collapse and Underground Hazard Liability. The policy shall be endorsed to extend the completed operations for two years after Final Completion of the Work.

(3) Retained Party's Pollution Liability: The insurance shall include Retained Party's Pollution Liability coverage when otherwise required by the Contract Documents. The City requires the Retained Party to provide completed operations coverage for two years after Final Completion of the Work. When required, such coverage shall include:

- a. Bodily injury including death, sickness, disease, mental anguish or shock sustained by any person;
- b. Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean

up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

c. Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

d. Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims;

e. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Retained Party warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (or specify desired number) years beginning from the time that work under this contract is completed;

f. On the Automobile Liability Coverage, endorsements CA9948 and MCS-90 are required if the Retained Party is transporting any type of hazardous materials; and

g. This policy must be kept in effect for up to two (2) years after completion of the project.

(4) Insurance Coverage - The insurance coverage obtained by the Retained Party:

a. Shall not be affected by any insurance coverage otherwise existing;

b. Shall name the City, its officers, employees and agents as additional insureds. The "additional insured" requirement shall also apply to Products/Completion Operations coverage. If for any reason Retained Party cannot obtain such coverage from its insurer, it shall obtain at Retained Party's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, including Products/Completed Operations coverage for up to 24 months after Final Completion, naming the City of Portland, its officers, employees and agents as Named Insured with not less than a \$1,000,000 limit per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. This policy must be kept in effect for 24 months following Final Completion;

c. Shall protect each insured in the same manner as though a separate policy had been issued to each, notwithstanding the naming of any

number of additional insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the policy beyond the amount, or amounts, for which the insurer would have been liable if only one person or entity had been named as the insured;

d. Shall permit partial occupancy or use of the Project by the City in advance of Substantial Completion without cancellation or discontinuance of coverage. In that event, the City and Retained Party shall agree upon the time when partial occupancy or use of the Project by the City shall occur. If the insurance coverage provided by the Retained Party requires consent of the Insurer before such occupancy or use occurs, the insurance policy shall also state that such consent shall not be unreasonably withheld; and

e. Shall be provided on an "occurrence" basis. If the City elects to accept insurance on a "claims made" basis, then "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Retained Party will be responsible for furnishing coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranties.

(e) Builder's Risk Insurance:

(1) Builder's Risk - If this contract involves the construction of a building, an addition to an existing building or extensive renovations to an existing building, the Retained Party shall purchase and maintain in force during the term of this Contract, at its own expense, Builder's Risk insurance in an amount equal to the Contract Amount, including any subsequent modifications for the entire project at the site on a replacement cost basis, including covering all costs needed to repair the structure or work (including overhead and profits) based on the value figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents, or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the City has insurable interest in the property to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of the Owner, the Retained Party, Subcontractors and sub-tier contractors in the project.

(2) Special Covered Cause of Loss Form - Builder's Risk Coverage shall be on a special covered 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 and earthquake coverage, and all below and above ground structures, water and sewer mains. Other coverage may be required if provided in contract documents. Coverage shall be written for 100% of the completed value (replacement cost basis) of the work being performed.



(3) Amendments and Provisions -The Builder's Risk shall also include the following amendments and provisions.

a. Waiver of Subrogation - Waiver of subrogation against all parties named as insured, but only to the extent the loss is covered;

b. Beneficial Occupancy Clause - The policy shall specifically permit partial or beneficial occupancy at or before substantial completion or final acceptance of the entire work. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance have consented to such partial occupancy or use. The City and Retained Party shall take reasonable steps to obtain consent of the insurance company or companies and agree to take not action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance;

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

d. Interior Damage - Any clause that excludes recovery of damage to the interior of building shall be deleted. The Builder's Risk policy shall provide for recovery for damage to the interior of a building if caused by perils insured against in the Builder's Risk Policy;

e. Design Error - The Builder's Risk policy shall not exclude coverage of damages caused by design error;

f. Settlement, Cracking, Etc - The Builder's Risk policy shall cover settling, cracking, shrinking or expansion (including coverage for loss resulting from settling, cracking, shrinking or expansion) of foundation walls, floors and other parts of the structure; and

g. Deductible - Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The deductible is the responsibility of the Retained Party.

(4) Builder's Risk Installation Floater - If Builder's Risk insurance is not required, then the Retained Party shall obtain, at the Retained Party's expense, and keep in effect during the term of this Contract, a Builder's Risk Installation Floater in the initial Contract Amount, as well as subsequently amended, on a replacement cost basis, including covering all costs needed to repair the structure or Work (including overhead and profit) based on the values figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the City has an insurable interest in the property to be covered,

whichever is earlier. The Builders' Risk Installation Floater shall include interest of the City, Retained Party, Subcontractors and sub-tier Contractors in the project.

(5) Special Covered Cause of Loss Form - The Builders' Risk Installation Floater shall be on a Special Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, faulty workmanship, labor, materials and equipment to be installed. Other coverages may be required if provided in the Contract Documents. The Builders' Risk Installation Floater shall also provide a Waiver of Subrogation against all parties named as insured, but only to the extent the loss is covered. Coverages shall be written for 100% of the completed value (replacement cost basis including labor and materials) of the work being performed or other limit as specified in the Contract Documents.

(6) Insured Loss - A loss insured under the Builder's Risk Insurance or Builder's Risk Installation Floater shall be adjusted in conjunction with the City and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Retained Party shall pay Subcontractors their just share of insurance proceeds received by the Retained Party, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to the Subsubcontractors in similar manner. The owner shall have power to adjust and settle a loss with insurers. If is expressly agreed that nothing in this section shall be subjected to arbitration and any references to arbitration are expressly deleted.

(7) Deductible - Any deductible shall not exceed \$50,000 for each loss. However, if earthquake and flood perils are both covered by the policy, the deductible shall not exceed 2 percent of each loss of \$50,000, whichever is greater.

(f) Automobile Liability - The Retained Party shall obtain, at Retained Party's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and hired vehicles. This coverage may be combined with the Commercial General Liability Insurance policy. The combined single limit per occurrence shall not be less than \$1,000,000.

(g) Negligence of City - Nothing in this section requires the Retained Party or its insurer to provide insurance to the City for claims arising out of the death or bodily injury to persons or damage to property caused, in whole or in part, by the negligence of the City.

(h) Claims of Damage - Retained Party shall defend, indemnify and hold the Owner harmless from any and all claims of damage, including attorney fees and costs, resulting from Retained Party's activities in regard to notification of utilities and emergency service providers.

## SCHEDULE A

ORS CHAPTERS 279A, 279B AND 279C REQUIRE EVERY PUBLIC CONTRACT TO CONTAIN CERTAIN PROVISIONS. PURSUANT TO THOSE CHAPTERS, THE FOLLOWING PROVISIONS SHALL BE A PART OF CONSTRUCTION CONTRACTS, AS APPLICABLE.

- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract

within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS279C.515 (2).

- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.
- Pursuant to ORS 279C.525, the following federal, state and local agencies that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of construction contracts. The agencies include, but may not be limited to the following:

**(1) Federal Agencies:**

- a. Agriculture, Department of:
  - 1. Forest Service
  - 2. Natural Resources Conservation Service
- b. Army, Department of the:
  - 1. Engineers, Corps of
- c. Commerce, Department of
  - 1. National Oceanic and Atmospheric Administration
  - 2. National Marine Fisheries Service
- d. Homeland Security, Department of:
  - 1. US Coast Guard
- e. Interior, Department of:
  - 1. Heritage, Conservation and Recreation Service
  - 2. Indian Affairs, Bureau of
  - 3. Land Management, Bureau of
  - 4. Reclamation, Bureau of
  - 5. Surface Mining, Reclamation and Enforcement, Office of
- f. US Fish and Wildlife Service
- g. Labor, Department of:
  - 1. Occupational Safety and Health Administration
  - 2. Mine Safety and Health Administration
- h. Transportation, Department of:
  - 1. Federal Highway Administration

**(2) Oregon Tribal Governments:**

- a. Warm Springs, Confederated Tribes of

**(3) State of Oregon Agencies:**

- a. Agriculture, Department of
  - 1. Natural Resources Division
  - 2. Soil and Water Conservation Division
- b. Consumer and Business Services, Department of
  - 1. Insurance Division
  - 2. Oregon Occupational Safety and Health Division
- c. Energy, Department of
- d. Environmental Quality, Department of
- e. Fish and Wildlife, Department of
- f. Forestry, Department of
- g. Geology and Mineral Industries, Department of
- h. Human Resources, Department of
- i. Insurance and Finance, Department of
- j. Oregon Occupational Safety and Health Division
- k. Labor and Industries, Bureau of
- l. Land Conservation and Development Department
- m. State Lands, Division of
- n. Water Resources Department

**(4) Local Agencies:**

- a. City Council
- b. County Courts
- c. County Commissioners

- d. Metro
- e. Planning Commissions
- f. Port Districts
- g. Public and Private Utilities:
  - 1. County Service Districts
  - 2. Fire Protection Districts
  - 3. Irrigation Districts
  - 4. Lighting Districts
  - 5. Metropolitan Service Districts
  - 6. Sanitary Districts
  - 7. Water Districts
- h. TriMet

- Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bonds requirements.
- The contractor is subject to claims under ORS 279C.600, relating to action on payment or public works bonds.
- The contractor acknowledges the statutory preferences for materials and supplies manufactured from recycled materials if economically feasible, pursuant to ORS 279B.280 and recycled oil pursuant to ORS 279B.275.
- The contractor shall not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.005.
- The contractor shall certify compliance with Oregon tax laws in accordance with ORS 305.385.
- The contractor will cooperate with Peregrine to prepare data for preparation of the Post-Project Evaluation Report required by ORS 279C.355.
- The contractor will certify that all subcontractors performing work described in ORS 701.005(2) (i.e., construction work) shall be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.
- The contractor must pay fees to BOLI pursuant to 279C.825.
- The contractor must comply with the retainage requirements in ORS 279C.550 to 279C.570.
- The contractor must include an amount of solar energy technology in the project in accordance with ORS 279C.527.
- The contractor must comply with State Department of Energy requirements and specifications pursuant to ORS 279C.528.
- The contractor must comply with the condition concerning steel material in ORS 279C.535.

EXHIBIT 3.5  
Entry Permits

The City issued entry permits to Peregrine Sports LLC for the following tests and investigations.

1. Geotechnical Design Investigation
2. Topographical Survey and Phase 1 Environmental Survey
3. Capital Needs, Current Conditions and Structural Review
4. Pile Testing Program
5. Phase 1 Preparatory Work

**EXHIBIT 6.1****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 Lounsedale 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 \_\_\_\_\_-, 2010, Fee No. 2010-\_\_\_\_\_, Multnomah County Deed Records.

**Permitted Exceptions**

The Land has been classified as Cities and Towns, as disclosed by the tax roll. If the Land becomes disqualified, said Land may be subject to additional taxes and/or penalties.

Levy Code: 001

Account No.: R316785

Map No.: 1N1E33DC-00800

City Liens, if any, in favor of the City of Portland.

None found as of December 3, 2009.

Easement for the purpose shown below and rights incidental thereto as set forth in a document:

In favor of: Henry Green, et al

Purpose: Water pipes

Recording Date: March 22, 1864  
Book: E  
Page: 170  
Affects: Exact location not disclosed

Said Easement rights are now held of record by the City of Portland, as disclosed by instrument;  
Recording Date: January 3, 1887  
Book.: 90  
Page: 105

Easement for the purpose shown below and rights incidental thereto as set forth in a document:  
In favor of: The City of Portland  
Purpose: Sewer and drain  
Recording Date: July 19, 1889  
Book: 123  
Page: 275  
Affects: A strip through the Easterly portion

Easement for the purpose shown below and rights incidental thereto as set forth in a document:  
In favor of: The City of Portland  
Purpose: Construction and maintenance of sewer  
Recording Date: June 13, 1891  
Book: 161  
Page: 111  
Affects: Exact location not disclosed

City of Portland Ordinance No: 155529, including the terms and provisions thereof;  
Recording Date: February 8, 1984  
Book: 1725  
Page: 892  
Recording No.: 84-009138

Land Use Review Document No.: LUR 00-00228 DZM, including the terms and provisions thereof;  
Recording Date: July 17, 2000  
Recording No.: 2000-098682

Memorandum of Stadium Use Agreement, including the terms and provisions thereof;  
Executed by: City of Portland and Portland Family Entertainment Limited Partnership  
Recording Date: July 31, 2000  
Recording No.: 2000-104883

Revocable Permit No.: TR-00-003 to use Dedicated Street Areas, including the terms and provisions thereof;  
Recording Date: December 18, 2000  
Recording No.: 2000-171796

Land Use Review Document No.: LUR 00-00803 AD, including the terms and provisions thereof;  
Recording Date: February 27, 2001  
Recording No.: 2001-025945



Land Use Review Document No.: LUR 01-00049 DZM, including the terms and provisions thereof;  
Recording Date: April 19, 2001  
Recording No.: 2001-055187

Land Use Review Document No.: LUR 01-00162 DZM, including the terms and provisions thereof;  
Recording Date: May 30, 2001  
Recording No.: 2001-078810

Land Use Review Document No.: LUR 01-00641 AD, including the terms and provisions thereof;  
Recording Date: November 16, 2001  
Recording No.: 2001-183347

Land Use Review Document No.: LUR 07-105046 DZM, including the terms and provisions thereof;  
Recording Date: March 30, 2007  
Recording No.: 2007-056008

Amended and Restated Easement Agreement and Right of First Refusal, including the terms and provisions thereof;  
Executed by: Multnomah Athletic Club, an Oregon non-profit corporation and The City of Portland, a municipal corporation  
Recording Date: \_\_\_\_\_, 2010  
Recording No.: 2010-\_\_\_\_\_

License to Use Easement, including the terms and provisions thereof;  
Executed by: City of Portland, a municipal corporation of the State of Oregon and Peregrine Sports, LLC, a Delaware limited liability company  
Recording Date: \_\_\_\_\_, 2010  
Recording No.: 2010-\_\_\_\_\_

Memorandum of Redevelopment Agreement, including the terms and provisions thereof;  
Executed by: City of Portland, a municipal corporation of the State of Oregon and Peregrine Sports, LLC, a Delaware limited liability company  
Recording Date: \_\_\_\_\_, 2010  
Recording No.: 2010-\_\_\_\_\_

Memorandum of Operating Agreement, including the terms and provisions thereof;  
Executed by: City of Portland, a municipal corporation of the State of Oregon and Peregrine Sports, LLC, a Delaware limited liability company  
Recording Date: \_\_\_\_\_, 2010  
Recording No.: 2010-\_\_\_\_\_

Memorandum of The Exclusive Use and Guaranty Agreement, including the terms and provisions thereof;  
Executed by: City of Portland, a municipal corporation of the State of Oregon and Peregrine Sports, LLC, a Delaware limited liability company  
Recording Date: \_\_\_\_\_, 2010  
Recording No.: 2010-\_\_\_\_\_

**EXHIBIT 6.2.1**  
**Amended and Restated MAC Easement**

**AFTER RECORDING, RETURN TO:**

Linda Meng, City Attorney  
 City of Portland  
 430 City Hall  
 1221 SW Fourth Avenue  
 Portland, OR 97204

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(Space Above This Line For Recorder's Use Only)

**AMENDED AND RESTATED EASEMENT AGREEMENT  
 AND  
 RIGHT OF FIRST REFUSAL**

This Amended and Restated Easement Agreement and Right of First Refusal ("Agreement") is entered into by and between MULTNOMAH ATHLETIC CLUB, an Oregon non-profit corporation (the "MAC") and THE CITY OF PORTLAND, a municipal corporation (the "City"). The MAC and the City are sometimes referred to herein jointly as the "Parties", and individually as a "Party".

FACTUAL BACKGROUND

A. Pursuant to a Deed dated December 28, 1966 and recorded March 6, 1967 in Book 550 at Page 1008 of the Official Records of Multnomah County, Oregon (the "Deed"), the MAC transferred certain real property now known as PGE Park (the "Stadium") to the City as more particularly described in Exhibit A attached hereto (the "Stadium Property"). The Deed also conveyed to the City certain easements (collectively, the "Deed Easements") for the benefit of the Stadium Property over a portion of MAC's adjoining property (the "MAC Property") as more particularly described in the Deed. The MAC Property is more particularly described in Exhibit B attached hereto. The Deed Easements have been subsequently modified or clarified as a result of the following documents, which, if recorded, are recorded in the Official Records of Multnomah County, Oregon ("Official Records"):

1. Permanent Easement dated January 21, 1981 and recorded February 17, 1981 in Book 1503 at Page 1453;
2. An unrecorded Agreement to Modify Easements dated December 30, 1981;
3. An unrecorded Agreement to Modify Easements executed by the MAC on August 30, 1982;
4. Agreement for Light Pole Easement dated October 3, 1997 and recorded December 22, 1997 as Fee No. 97196730; and

5. Agreement to Clarify and Modify Easements dated July 24, 2000 and recorded July 31, 2000 as Fee No. 2000-104881.

The foregoing documents along with the Deed Easements are hereinafter referred to as the "Prior Easement Agreements".

B. The Deed conveying the Stadium Property is subject to a reservation in favor of the MAC of a right of first refusal to purchase all or a portion of the Stadium Property ("Right of First Refusal").

C. The City plans to finance, develop and construct renovations to PGE Park to convert PGE Park to a soccer stadium, consistent with the requirements of Major League Soccer, which will be operated by Peregrine Sports, LLC ("Peregrine" or sometimes herein "Operator", including its successors and assigns).

D. To accommodate the renovations to PGE Park, the MAC and the City agree that the Prior Easement Agreements need to be amended and restated. The MAC and the City further agree to amend and restate the Right of First Refusal.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises that are set forth in this Agreement, the City and the MAC agree as follows:

1. Amendment and Restatement. This Agreement amends, restates and supersedes the Prior Easement Agreements and the Right of First Refusal on the terms and conditions set forth in this Agreement.
2. Description of Easement Area. The Parties agree that the portion of the MAC Property which is subject to the easements described in this Agreement is the real property more particularly described in Exhibit C attached hereto and as shown on the ALTA Survey referenced in Exhibit C (the "Easement Area").
3. Grant of Easements. The MAC hereby grants to the City the following exclusive easements described in Sections 3.1, 3.2, 3.3 and 3.4 in, on, under, over and across designated portions of the Easement Area ("Easements"), subject to the conditions of Sections 3.5, 3.6 and 3.7 and the other terms and conditions of this Agreement:
  - 3.1. Access Road. An easement for ingress, egress and access to the Stadium Property through the access road (the "Access Road") as shown on the plans more particularly described in Exhibit D attached hereto (the "Access Road Plans"), for purposes relating to the maintenance, use and operation of the athletic facilities and appurtenances located on the Stadium Property. The MAC, the City and the Operator each acknowledge receipt of a copy of the Access Road Plans. If the City, or the Operator or either of their respective agents, contractors or permittees in using the Access Road should damage the MAC Building, any of the utilities or other improvements servicing or related to the MAC Building, the City shall be responsible for the cost to repair such damage. As set forth on the Access Road Plans, the City, through the Operator, intends to modify the Access Road, which shall be done in accordance with the City's separate agreements

with the Operator. The Operator has provided construction drawings for the Access Road to the MAC, and by execution of this Agreement, the MAC, subject to the terms and conditions of this Agreement, approves the construction drawings for the Access Road. Subject to Section 4 of this Agreement, the MAC hereby reserves the right to use the Access Road for the maintenance, use and operation of the MAC's existing building and related facilities (collectively "MAC Building") and such other buildings and related facilities of the MAC which may hereafter be located on the MAC Property. The City, at its own expense, shall maintain the Access Road in a reasonable state of repair and operating condition; provided however, that if the MAC or any permittee of the MAC (other than the City, the Operator or their respective permittees) shall damage the Access Road or any part thereof, the MAC shall be responsible for the cost to repair any such damage. In the event either Party undertakes to relocate, expand, replace or repair the Access Road, the other Party acknowledges that for a reasonable period of construction, the right of access to the Stadium Property or the MAC Property may be temporarily suspended. In connection with the joint use of the Access Road, the MAC and the City shall cooperate to maintain security and to prevent undue obstruction of the use of the Access Road by either Party.

- 3.2. Existing Improvements. An easement for maintenance, repair, and replacement of all improvements existing as of the date of this Agreement in the Easement Area, including any improvements that may be improved, added or modified as a consequence of the construction of the New Improvements, as defined below (collectively the "Existing Improvements"). The MAC further grants to the City the right to temporarily occupy that unimproved portion of the Easement Area that is immediately adjacent to the south wall of the west grandstand of the Stadium for the purpose of maintenance, repair, replacement, supplement, reinforcement or correction of said grandstand. Such area is cross-hatched on a copy of the ALTA Survey referenced in Exhibit C.
- 3.3. New Improvements. An easement for construction, repair, maintenance and replacement of the improvements to the Stadium to be installed or constructed by the City or through its agreements with the Operator in the Easement Area (the "New Improvements") shown on the plans more particularly described in Exhibit E attached hereto (the "New Improvement Plans"). The MAC, the City and the Operator each acknowledge receipt of a copy of the New Improvement Plans. Other than the improvements to the modifications to the Access Road, the New Improvements shall not be constructed any closer to the northerly face of the existing MAC Building than as shown on the New Improvement Plans ("Construction Easement Line"). Any material change in the location of the New Improvements and, therefore, the Construction Easement Line closer to the northerly face of the existing MAC Building will require the prior written consent of the MAC which will not be unreasonably withheld, conditioned or delayed, so long as moving the Construction Easement Line closer to the northerly face of the MAC Building will not interfere with the ability of the MAC to construct the Option B Expansion and the Option B Expansion Support System as provided in Section 5. As used in this Section 3.3 and Section 3.5, "material" or "in any material respect" means with respect to any change to the New Improvements, including their location, such change cannot interfere with the ability to construct, increase the difficulty to construct

or to increase the cost to the MAC to construct the Option B Expansion and the Option B Expansion Support System.

- 3.4. Future Improvements. An easement for construction, repair, maintenance and replacement of any future improvements or modifications to the New Improvements intended to be installed or constructed by the City or the Operator in the Easement Area ("Future Improvements"), if approved by the MAC pursuant to the provisions of Section 3.5. The construction, repair, maintenance and replacement of New Improvements and any Future Improvements and the operation of the Stadium shall be done in a manner that will not interfere with the proper functioning of air intakes located on the northerly face of the existing MAC Building, and will not require the northerly face of the existing MAC Building and its wall openings to be limited in size, covered, or require an increase in its fire rating.
- 3.5. Approval of New and Future Improvements. By execution of this Agreement, the MAC, subject to the terms and conditions of this Agreement, approves the New Improvements, as shown on the New Improvement Plans described in Exhibit F. In the event that the City, whether through the Operator or otherwise, should modify the New Improvement Plans including the location of the New Improvements (except for modifications that are consistent with the increasing detail of the New Improvement Plans leading to construction drawings for the New Improvements but such modifications cannot increase the height, length, width, depth, or bulk of the New Improvements in any material respect or increase the closeness of the New Improvements to the northerly face of the existing MAC Building in any material respect), any such modification shall be subject to the MAC's prior written approval using the procedures set forth in this Section 3.5. If, after the New Improvements have been constructed, the City or the Operator should seek to install or construct Future Improvements, the City or the Operator shall initially provide to the MAC 100% complete schematic design drawings ("SD Drawings") for the MAC's approval, which approval will not be unreasonably withheld, conditioned or delayed. If the MAC does not approve or disapprove the request for approval in writing within ten (10) business days after receipt of the SD Drawings, the SD Drawings will be deemed approved. When available to the City or the Operator, the City or the Operator shall provide to the MAC 50% complete design development drawings ("DD Drawings") along with a concise narrative of the purpose of any proposed Future Improvements for the MAC's approval, which approval will not be unreasonably withheld, conditioned or delayed. MAC's approval of the SD Drawings and DD Drawings for the Future Improvements may be conditioned on such Drawings not causing a conflict with the Option B Expansion as described in Section 5 of this Agreement or interfering with the MAC sightlines as set forth in Section 7, without the MAC's prior written approval. If the MAC does not approve or disapprove the request for approval in writing within ten (10) business days after receipt of the DD Drawings, the DD Drawings will be deemed approved. Prior to commencement of installation or construction of the New Improvements or the Future Improvements or securing of a building permit therefore, the City, or the Operator, shall provide construction drawings ("Construction Drawings") that are sufficient for the securing of any applicable building permit, for the MAC's prior written approval, which approval will be limited to whether the Construction Drawings are consistent with the DD Drawings. If the MAC does not

approve or disapprove the request for the approval of the Construction Drawings in writing within ten (10) business days after receipt of the Construction Drawings, the Construction Drawings will be deemed approved. Any disapproval given by the MAC under this Section 3.5 shall include specific reasons for such disapproval. The MAC's approval of any of the New Improvement Plans, SD Drawings, DD Drawings, or Construction Drawings shall not relieve the City or the Operator from complying with the other terms and conditions of this Agreement.

- 3.6. Use of the Easement Area. The City may use and occupy the Existing Improvements, the New Improvements and the Future Improvements for the operation of the Stadium and for uses related to the operation of the Stadium, including office, sports rehabilitation, and medical facilities and for no other purpose without the prior written consent of the MAC, which may be withheld in the MAC's sole discretion. The MAC hereby consents to the use by the Operator of the Easements and the Easement Area granted to the City in this Section 3.
- 3.7. Construction of New and Future Improvements. The City and the Operator acknowledge that the MAC's ballroom is located on the north side of the MAC Building and that the ballroom will likely be impacted by the noise of the construction of the New Improvements and any Future Improvements. At least thirty (30) days prior to commencement of construction of the New Improvements or any Future Improvements, the City, or the Operator, shall provide to the MAC a schedule and description of the construction activities to be undertaken (the "Construction Information"). Within ten (10) days after receipt of the Construction Information, representatives from the MAC and the City and/or the Operator, shall meet for the purpose of discussing, establishing and implementing reasonable procedures for the construction activities that will minimize noise and vibration to the MAC's Building and in particular to the MAC's ballroom that may be caused by the construction activities.
4. Reserved Rights of Use in Favor of the MAC. The MAC hereby reserves the right to use the Access Road for the maintenance, use and operation of the MAC Building and such other buildings and facilities which may hereafter be located on the MAC Property, subject to this Section 4. Additionally, the MAC reserves the right to construct, repair, maintain and replace under the Access Road or anywhere else in the Easement Area utility lines that presently service or may in the future service the MAC Building and as the same may be expanded from time to time including but not limited to a sewer ejection line and electrical lines which presently provide service to the MAC Building. The MAC, at its cost and expense, will repair any damage to the Access Road, the Easement Area and the Improvements permitted by this Agreement caused by the exercise of the MAC's reserved rights. The MAC further reserves the right to use those portions of the Easement Area as the MAC shall deem necessary for the placement of structural supports or other improvements to the MAC Building. The City hereby agrees to the reserved rights in favor of the MAC. Subject to the provisions of Sections 5 and 7, the MAC agrees that its reserved rights will be exercised in a manner that will not interfere with the Existing Improvements, the New Improvements, the Future Improvements (which have been approved by the MAC) and the City's use of the Easement Area allowed by this Agreement.

5. Expansion of MAC Building.

5.1. Option B Expansion. The MAC Building contains approximately 290,633 square feet of floor area. The MAC has previously undertaken conceptual designs for the expansion of the MAC Building that would add approximately 65,000 square feet of floor area along and forty-five (45) feet out from the northerly face of the MAC Building and with an east-west dimension of approximately 337 feet commencing approximately 100 feet easterly of the westerly MAC property line which is adjacent to SW 20<sup>th</sup> Avenue (the "Option B Expansion"). The Option B Expansion is designed to be constructed over a substantial portion of the length of the Access Road which would require footings to be placed just north of the Access Road as the Access Road will be located upon completion of the construction of the New Improvements. The general locations of the Option B Expansion and the footings for the Option B Expansion are shown on the plans more particularly described in Exhibit F attached hereto (the "Option B Expansion Plans"). To the extent that the freestanding concrete pads at the southerly end of the Stadium may interfere with the construction of the footings and structural supports for the Option B Expansion (collectively the "Option B Structural Support System"), the MAC shall have the right, at its cost and expense, to cut into and modify the concrete pads, as reasonably necessary, in order to construct the Option B Structural Support System. Any such modification to the concrete pads will be done in a manner that will not unreasonably interfere with the use and operations of the Stadium or the City's easement for ingress and egress and access to the Stadium Property through the Access Road. Upon completion of the Option B Structural Support System, the MAC, at its cost and expense, shall repair the concrete pads and any damage to the Stadium Property and the improvements thereon caused by the MAC's activities to substantially the same condition as they existed prior to the construction of the Option B Structural Support System. The Parties acknowledge that the New Improvement Plans generally provide adequate space for the Option B Structural Support System, provided that the MAC acknowledges that there is an area at the east end of the Option B Expansion as it meets with the physical therapy facility as shown on the New Improvement Plans where there may not be adequate space for the Option B Structural Support System (the "Conflict Area"). The City and the Operator agree to work cooperatively with the MAC in adapting the New Improvement Plans and the Option B Structural Support System in the Conflict Area to accommodate the construction of the Option B Expansion. Without the prior written consent of the MAC, which consent may be withheld in the MAC's sole discretion, the New Improvement Plans will not be modified to cause any further interference with the Option B Expansion and the Option B Structural Support System. If the MAC undertakes the Option B Expansion, the MAC shall construct the Option B Structural Support System as shown in the Option B Expansion Plans as such plans may be modified to accommodate construction in the Conflict Area.

5.2. Additional Expansion. The MAC hereby reserves the right to undertake additional expansion of the MAC Building that would add approximately 30,000 square feet or floor area along the northerly face of the MAC Building that would commence immediately east of the easterly end of the proposed Option B Expansion and run easterly to the end of the existing MAC Building which is adjacent to S.W. 18<sup>th</sup> Avenue (the "Additional Expansion"). The Additional Expansion would be constructed over the



Access Road and its footings would be placed just north of the Access Road subject to the conditions in the following sentence. The MAC's reserved right to construct the Additional Expansion is subject to the conditions that the Additional Expansion would not interfere with the construction and use of the New Improvements or any Future Improvements (which have been approved by the MAC) and would not interfere with the City's easement for ingress, egress and access to the Stadium Property through the Access Road.

- 5.3. Approval by the City. Prior to commencing construction of the Option B Structural Support System or the other improvements comprising the Option B Expansion or the Additional Expansion, the MAC shall obtain the prior written approval of the City for the Option B Structural Support System and the Additional Expansion in the same manner as provided for in Section 3.4 for the approval of New Improvements and Future Improvements. The MAC, as part of the approval of the Option B Structural Support System and the Additional Expansion, shall provide plans that demonstrate the impacts on the structure of the Stadium and the Access Road, if any.
6. Right to Relocate Stadium Scoreboard and Field Lights. The location of the scoreboard to be constructed as part of the New Improvements and the existing field lights are shown on the New Improvement Plans (the "Stadium Scoreboard" and "Field Lights" respectively). Should the MAC obtain the necessary governmental approvals and elect to construct all or a portion of Option B Expansion, the MAC shall have the right under this Agreement to relocate the Stadium Scoreboard and the Field Lights at the MAC's sole cost and expense. The MAC shall provide the City and the Operator with plans showing the proposed place and schedule for relocating the Stadium Scoreboard and the Field Lights, and how all necessary structural supports and utilities for the Stadium Scoreboard and the Field Lights will be provided, for the City's approval, which approval will be given or withheld in the same manner as provided for in Section 3.4 for the approval or disapproval for New Improvements or Future Improvements.
7. Preservation of MAC Sightlines. The City and the MAC acknowledge and agree that the New Improvements, if constructed as described in New Improvement Plans, will not alter the existing sightlines from the MAC facilities to the playing field of the Stadium and will leave sightlines that are extremely important to the MAC and the future development of the MAC facilities. The City agrees that the preservation of these existing sightlines is an element of the consideration for the MAC entering into this Agreement. Accordingly, the City and the MAC agree that the MAC may, reasonably and in good faith, withhold its approval of any Future Improvements which the MAC determines in the exercise of its reasonable discretion, will interfere with sightlines from Level B or above of the MAC Building, which Level B is approximately 37.7 feet above the field level as shown on New Improvement Plans.
8. The MAC's Right to Use the Stadium. The MAC shall have the right to use the Stadium for its activities subject to the availability of the Stadium, all rules and regulations applicable to the Stadium, whether promulgated by the City or the Operator, which rules and regulations shall be enforced by the City or the Operator on a consistent and non-discriminatory basis. Whenever the MAC uses the Stadium, the MAC shall pay the then established rates charged to comparable parties for comparable usage.

9. Insurance and Indemnity.

9.1. City's Indemnification. The City, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, and each lessee or other user of the Stadium under authority of the City, agree to indemnify and hold harmless the MAC from any and all claims, harm, damage, injury and loss of whatever kind or nature arising from the use of the Easement Area pursuant to this Agreement. This duty of indemnification shall include, but not be limited to, the provision of a defense of the MAC with regard to any such claim by counsel of the MAC's choice in the exercise of its discretion. In addition to the foregoing, the City shall provide, or require that the Operator of the Stadium under the authority of the City provide General Commercial Liability insurance with policy limits no less than the amount required in the Operating Agreement between the City and the Operator, naming the MAC as an additional insured. Written notice of the termination or amendment of such insurance policy shall be provided to the MAC no more than thirty (30) days after such change. In the event the City, or the Operator of the Stadium shall fail to provide such insurance at any time, the MAC may obtain such insurance as it deems necessary in its exclusive discretion, and the City shall be obligated to pay to the MAC the cost of the premium(s) therefor upon demand.

9.2. MAC's Indemnification. The MAC agrees to indemnify and hold harmless the City and the Operator from any and all claims, harm, damage, injury and loss of whatever kind or nature arising from the use of the Easement Area pursuant to Sections 5, 6 and 8, above. This duty of indemnification shall include, but not be limited to, the provision of a defense of the City or Operator with regard to any such claim by counsel of the City's choice in the exercise of its exclusive discretion.

10. Term of Effectiveness of Agreement. This Agreement shall be effective upon its execution, and shall remain in effect so long as the Existing Improvements and the New Improvements and any Future Improvements approved by the MAC pursuant to Section 3.4 (collectively, the "Improvements") are maintained in good condition and repair. If the MAC determines that the Improvements are not being maintained in good condition and repair, it shall notify the City. The City shall have ninety (90) days after receipt of said notice to bring the Improvements into good condition and repair, unless the nature of the repair reasonably requires more than ninety (90) days to complete, in which event the City shall have such time as is required to diligently pursue the repair to completion. If the City fails to do so, the MAC may terminate the Easements granted to the City under this Agreement without affecting the effectiveness of the MAC's Right of First Refusal under this Agreement.

11. Restated Right of First Refusal. As consideration for the grant of the Easements described in this Agreement, the City shall not sell, or otherwise dispose of the Stadium Property or any part thereof without first having offered to sell the same to the MAC (the "Right of First Refusal"). The offer shall have attached to it a statement of intention to sell or otherwise dispose of, as the case may be, the name and address of the prospective purchaser or recipient of any other disposition, a description of the property to be sold and the terms including price of such sale or other disposition (collectively the "Offer Notice"). The price must be for all cash and no other consideration and the MAC is not required to comply with any terms and conditions which are unique to or may only be satisfied by the prospective purchaser or

recipient identified in the Offer Notice. Within ninety (90) days after receipt of the Offer Notice, the MAC may by written notice to the City, elect to purchase the offered property upon the terms contained in the Offer Notice (the "Election Notice"). The Election Notice shall specify a date for the closing of the purchase, which date shall not be more than one hundred eighty (180) days after the date the City receives the Election Notice. If the Offer Notice is not accepted by the MAC, the City may make a bona fide sale or other disposition to the prospective purchaser or recipient of any other disposition named in the statement attached to the Offer Notice, but only in accordance with the terms stated in the Offer Notice. However, if the City shall fail to make such sale or other disposition within one hundred eighty (180) days following giving of the Offer Notice, then the Right of First Refusal contained in this Section 11 will continue to be effective.

12. Representations. The MAC hereby represents and warrants to the City that it has the authority to grant the Easements described herein and that there are no liens or encumbrances affecting the Easement Area except those of record on the date of the recording of this Agreement or those created by the City.
13. Default and Remedies. The failure of a Party to perform an obligation imposed on that Party under this Agreement shall constitute a default unless the default has been cured as hereinafter provided after receipt of written notice of the alleged failure to perform from the non-defaulting Party. The cure periods shall be as follows: (a) ten (10) days in the cure of a failure to give an approval or other decision or execute a document; (b) thirty (30) days in the cure of all other defaults (other than as provided in (c) below) provided that if the default cannot be reasonably cured within such thirty (30) day period, the Party undertaking the cure commences to cure such default as early as reasonably possible within such thirty (30) day period and diligently prosecutes such cure to completion; and (c) ninety (90) days as provided for in Section 10 for failure to maintain the improvements. The Parties hereto shall have the rights available to them at law or in equity arising out of a breach or default by the other Party under this Agreement, including the right to seek recovery for damages from the date of breach or default and for the right of specific performance.
14. General Provisions.
  - 14.1. Captions. Captions used in this Agreement are used solely for convenience and shall not be used to interpret the terms or provisions of this Agreement.
  - 14.2. Amendments. Any amendment to this Agreement must be in writing and signed by both the City and the MAC.
  - 14.3. Complete Agreement. This Agreement constitutes the complete and final agreement of the Parties with respect to matters covered by this Agreement.
  - 14.4. Attorneys Fees. In the event either Party institutes litigation to enforce or interpret this Agreement, then the prevailing or non-defaulting Party shall recover from the other Party, and the other Party shall pay, the prevailing or non-defaulting Party's reasonable attorneys fees, paralegal fees, expert witness fees, costs and expenses as determined by the judge at trial or on any appeal or petition therefrom.

- 14.5. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors in interest, including lessees and authorized users of the Stadium Property. This Agreement shall also be binding upon the MAC and any party to whom the MAC transfers the MAC Property and any party to whom the City transfers ownership of the Stadium Property.
- 14.6. Notices. Any notice to be given by a Party under the terms of this Agreement must be in writing. Notices may be given by hand delivery, by FedEx or other reputable overnight courier service, by registered or certified mail (return receipt requested), or by facsimile where a fax number is given below with a hard copy sent on the same business day by any of the foregoing means. The sending party shall prepay all applicable delivery and postage charges. Any notice shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof; provided that with respect to notices sent by facsimile transmission, the notice shall be deemed delivered on the date transmitted if sent by 5:00 p.m. Pacific Time and the next business day if sent after 5:00 p.m. Pacific Time, provided in either case that there is evidence of the transmission time printed by the sending machine and the requisite hard copy is sent as provided above. Any party may change its address for notice by written notice given to the other in the manner provided in this Section 12.6. Notices may be given by counsel for any party hereto.-All notices to the City shall be sent to:

The City of Portland  
 Office of Management and Finance  
 1120 S.W. Fifth Avenue, Room 1250  
 Portland, OR 97204  
 Attention: Chief Administrative Officer

With copies to:

Office of the City Attorney  
 City of Portland, Oregon  
 1221 S.W. Fourth Avenue, 4<sup>th</sup> Floor  
 Portland, Oregon 97204  
 Attn: City Attorney  
 Fax No.: 503-823-3089  
 Confirmation No.: 503-823-4047

and to:

Ball Janik LLP  
 101 SW Main Street, Suite 1100  
 Portland, OR 97204  
 Attn: Steve Janik/Dina Alexander  
 Fax No.: 503-295-1058  
 Confirmation No.: 503-228-2525

All notices to the MAC shall be sent to:

Multnomah Athletic Club  
1849 S.W. Salmon Street  
Portland, OR 97201  
Attn: General Manager  
Fax No.: 503-223-8497  
Confirmation No.: 503-517-2318

and to:

Roberts Kaplan LLP  
601 SW 2<sup>nd</sup> Avenue, Suite 1800  
Portland, OR 97204  
Attn: Mike Silvey  
Fax No.: 503-221-1510  
Confirmation No.: 503-221-0607

- 14.7. Regulatory Approvals. Notwithstanding anything to the contrary set forth in this Agreement, the Option B Expansion and the relocation of the Stadium Scoreboard shall be subject to any and all applicable regulatory process of the City, and any approval granted by the City in this Agreement is made in the City's proprietary capacity only.
- 14.8. Counterparts. This Agreement may be executed in any number of counterparts, all of which evidence only one agreement, binding on all parties, even though all parties are not signatory to the same counterpart. For the convenience of the Parties, the signature and acknowledgment pages may be detached from one or more counterparts and reattached to a single counterpart for recording purposes.

*(Remainder of Page Intentionally Left Blank)*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to be effective as of the date of the later signature of a Party below.

MULTNOMAH ATHLETIC CLUB, an Oregon non-profit corporation

By: \_\_\_\_\_  
Norm Rich, General Manager  
Dated: \_\_\_\_\_

THE CITY OF PORTLAND, a municipal corporation

By: \_\_\_\_\_  
Sam Adams, Mayor  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
LaVonne Griffin-Valade, Auditor  
Dated: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Linda Meng, City Attorney  
Dated: \_\_\_\_\_

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STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared NORM RICH, General Manager of Multnomah Athletic Club, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared SAM ADAMS, Mayor of the City of Portland, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_



STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared LA VONNE GRIFFIN-VALADE, Auditor of the City of Portland, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared HENRY MERRITT PAULSON, III, Manager of Peregrine Sports, LLC, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

Exhibit A

## Stadium Property

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.

Exhibit B

## MAC Property

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 particularly described as follows:

Beginning at the Southwest corner of Block 5 in the Southeasterly portion of the Amos N. King Donation Land Claim and known as AMOS KING'S ADDITION, said point also being the intersection of the Southeasterly line of S.W. 20th Ave. (formerly Stout St.) with the Northeasterly line of S.W. Salmon St. (formerly West Salmon St.); thence Northeasterly along the Easterly line of S.W. 20th Ave., 240.17 feet to a point, said point being the most Westerly point of that property deeded to the City of Portland by Deed recorded March 6, 1967, Book 550, Page 1008; thence Southeasterly along the Southwesterly line of said property deeded to the City of Portland to the most Southerly point of said property deeded to the City of Portland, said point also being on the Northwesterly line of S.W. 18th Ave.; thence Southwesterly along said Northwesterly line of S.W. 18th Ave. to its intersection with the Northerly line of S.W. Salmon St.; thence Northwesterly along the Northerly line of S.W. Salmon St. 485.11 feet to the point of beginning.

TOGETHER WITH those portions of Block 330, PORTLAND and portions of vacated street adjoining thereto, in the City of Portland, County of Multnomah and State of Oregon described in Deeds recorded August 3, 1926 in Book 1069, Page 53, Fee 36846 and recorded August 9, 1926 in Book 1065, Page 463, Fee No. 37684 and recorded August 23, 1926, in Book 1086, Page 488, Fee No. 40019, Deed Records.

EXCEPTING THEREFROM those portions lying within the parcel conveyed to the City of Portland by Deed recorded March 6, 1967, in Book 550, Page 1008.

FURTHER EXCEPTING THEREFROM that portion described as Parcel 1 - Fee in Stipulated Final Judgment entered under Suit No. 9507-04616 in the State Circuit Court for the County of Multnomah and recorded May 11, 1999 as Fee No. 99-094673.

Exhibit C

## Easement Area Description

The Easement Area is generally described as that portion of the MAC Property from the northerly face of the MAC Building (as that face of the MAC Building runs east-west between SW 18<sup>th</sup> Street and SW 20<sup>th</sup> Street) to the northerly boundary line of the MAC Property which is the southerly boundary of the Stadium Property (the "Property Line"). The Easement Area and the Property Line are more particularly shown on W&H Pacific A.L.T.A. Survey, drawing sheet 1/1 dated December 14, 1999 (the "ALTA Survey"), receipt of a copy of the ALTA Survey is hereby acknowledged by the MAC, the City and the Operator and the Easement Area is as generally shown on an Architectural Site Plan prepared by Ellerbe Becket, Inc. dated January 4, 2010 and attached hereto as Exhibit C-1. The MAC, the City and the Operator acknowledge that the improvements shown in the Easement Area on the ALTA Survey are being replaced by the improvements shown on the New Improvement Plans, subject to the terms and conditions of this Agreement.

Exhibit C-1

Sheet No. \_\_\_\_\_ of \_\_\_\_\_  
 Date \_\_\_\_\_

PCE Prof. Remediation  
 1444 Morrison St.  
 Portland, OR 97201

PRESCOTT SPORTS, LLC  
 1444 Morrison St.  
 Portland, OR 97201

CITY OF PORTLAND  
 1444 Morrison St.  
 Portland, OR 97201

City of Portland  
 1444 Morrison St.  
 Portland, OR 97201

ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201

ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201

ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201

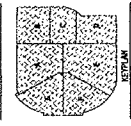
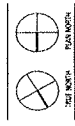
ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201

ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201

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 1444 Morrison St.  
 Portland, OR 97201

ELLERBE BECKET  
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 Portland, OR 97201

ELLERBE BECKET  
 1444 Morrison St.  
 Portland, OR 97201



ELLERBE BECKET

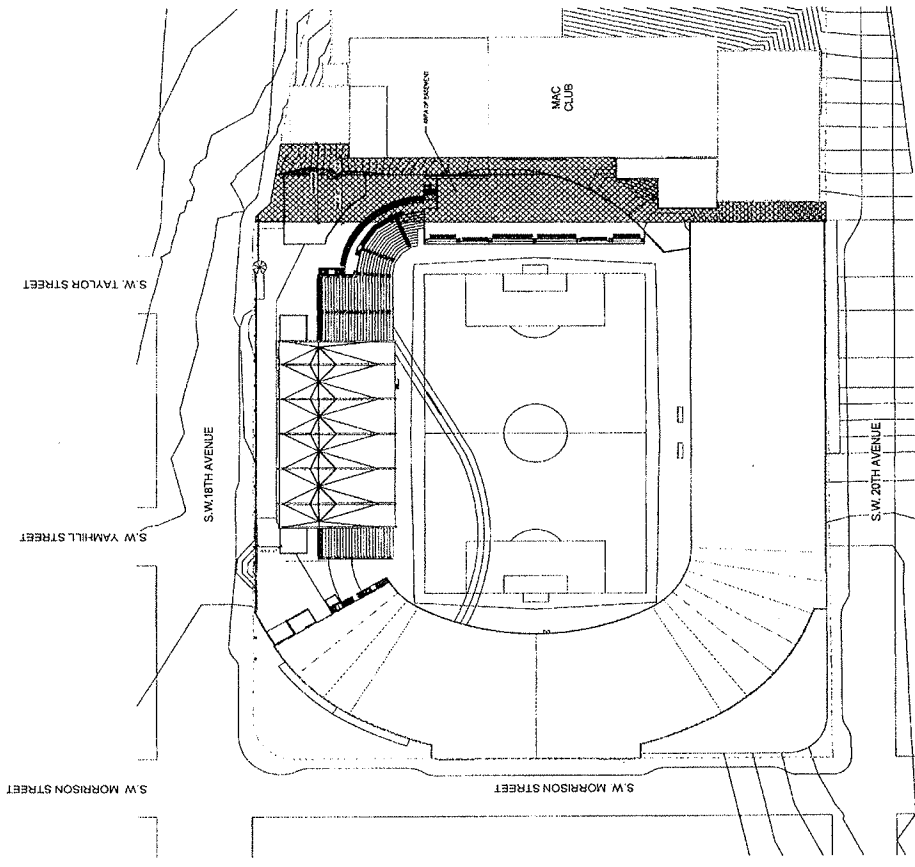
1444 Morrison St.  
 Portland, OR 97201  
 503.253.1100  
 www.ellerbebeck.com

ARCHITECTURAL SITE PLAN

Scale: 1/8" = 1'-0"

North Arrow

Sheet No. A100 of A100



000000000000000000

Exhibit D

## Access Road Plans

The Access Road Plans means Sheets A-1 and A-2 of the Peregrine Sports – PGE Park renovation, South Access Drive prepared by architect Ellerbe Becket, Inc., dated December 11, 2009, Comm. No. 1701.0001.00.

Exhibit E

ELLERBE BECKET



## EXHIBIT E

50% Design Development Drawing List - Issued 11/24/2009

## ARCHITECTURAL GENERAL

A000	TITLE SHEET
A001	INDEX OF DRAWINGS
A002	SYMBOLS / MATERIALS / ABBREVIATIONS
A003	WALL PARTITION TYPES
A004	GEOMETRY PLAN
A005	EVENT PLAN - SOCCER

## ARCHITECTURAL DEMO

AD101	ARCHITECTURAL DEMO PLAN - EVENT LEVEL - OVERALL
AD101D	ARCHITECTURAL DEMO PLAN - EVENT LEVEL - AREA D
AD101E	ARCHITECTURAL DEMO PLAN - EVENT LEVEL - AREA E
AD101F	ARCHITECTURAL DEMO PLAN - EVENT LEVEL - AREA F
AD101G	ARCHITECTURAL DEMO PLAN - EVENT LEVEL - AREA G
AD104	ARCHITECTURAL DEMO PLAN - PRESS BOX LEVEL

## ARCHITECTURAL

A100	ARCHITECTURAL SITE PLAN
A101	EVENT LEVEL FLOOR PLAN - OVERALL
A101A	EVENT LEVEL FLOOR PLAN - AREA A
A101B	EVENT LEVEL FLOOR PLAN - AREA B
A101C	EVENT LEVEL FLOOR PLAN - AREA C
A101D	EVENT LEVEL FLOOR PLAN - AREA D
A101E	EVENT LEVEL FLOOR PLAN - AREA E
A101F	EVENT LEVEL FLOOR PLAN - AREA F
A101G	EVENT LEVEL FLOOR PLAN - AREA G
A102	CLUB LEVEL FLOOR PLAN - OVERALL
A102A	CLUB LEVEL FLOOR PLAN - AREA A
A102B	CLUB LEVEL FLOOR PLAN - AREA B

 100 years of  
**REAL**  
 sustainability

ELLERBE BECKET



A102C	CLUB LEVEL FLOOR PLAN - AREA C
A102D	CLUB LEVEL FLOOR PLAN - AREA D
A103	CONCOURSE LEVEL FLOOR PLAN - OVERALL
A103A	CONCOURSE LEVEL FLOOR PLAN - AREA A
A103B	CONCOURSE LEVEL FLOOR PLAN - AREA B
A103C	CONCOURSE LEVEL FLOOR PLAN - AREA C
A103D	CONCOURSE LEVEL FLOOR PLAN - AREA D
A103E	CONCOURSE LEVEL FLOOR PLAN - AREA E
A103F	CONCOURSE LEVEL FLOOR PLAN - AREA F
A103G	CONCOURSE LEVEL FLOOR PLAN - AREA G
A104	ROOF PLAN - OVERALL
A104A	ROOF PLAN - AREA A
A104B	ROOF PLAN - AREA B
A104C	ROOF PLAN - AREA C
A106	CANOPY ROOF PLAN
A201	EVENT LEVEL - REFLECTED CEILING PLAN - OVERALL
A201A	EVENT LEVEL - REFLECTED CEILING PLAN - AREA A
A201B	EVENT LEVEL - REFLECTED CEILING PLAN - AREA B
A201C	EVENT LEVEL - REFLECTED CEILING PLAN - AREA C
A201D	EVENT LEVEL - REFLECTED CEILING PLAN - AREA D
A201E	EVENT LEVEL - REFLECTED CEILING PLAN - AREA E
A201F	EVENT LEVEL - REFLECTED CEILING PLAN - AREA F
A201G	EVENT LEVEL - REFLECTED CEILING PLAN - AREA G
A202	CLUB LEVEL - REFLECTED CEILING PLAN - OVERALL
A202A	CLUB LEVEL - REFLECTED CEILING PLAN - AREA A
A202B	CLUB LEVEL - REFLECTED CEILING PLAN - AREA B
A202C	CLUB LEVEL - REFLECTED CEILING PLAN - AREA C
A230	CONCOURSE LEVEL - REFLECTED CEILING PLAN - OVERALL
A231	REFLECTED CEILING PLANS @ CONCOURSE LEVEL & ROOF
CANOPY	
A301	EXTERIOR ELEVATIONS
A302	EXTERIOR ELEVATIONS
A303	BUILDING ELEVATIONS
A401	BUILDING SECTIONS



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A402	BUILDING SECTIONS
A403	BUILDING SECTIONS
A411	WALL SECTIONS
A412	WALL SECTIONS
A601	STAIR #1 & ELEVATOR #1 PLANS & SECTIONS
A602	STAIR #2,3,4 PLANS & SECTIONS
A603	STAIR #5 & ELEVATOR #2 PLANS & SECTIONS
A604	STAIR #6,7 PLANS & SECTIONS
A701	ENLARGED PLANS
A702	ENLARGED PLANS
A703	ENLARGED PLANS

## STRUCTURAL

S101	FOUNDATION PLAN
S102	CLUB LEVEL FRAMING PLAN
S103	CONCOURSE LEVEL FRAMING PLAN

## MECHANICAL

M101	EVENT LEVEL HVAC PLAN - OVERALL
M101A	EVENT LEVEL HVAC PLAN - AREA A
M101B	EVENT LEVEL HVAC PLAN - AREA B
M101C	EVENT LEVEL HVAC PLAN - AREA C
M101D	EVENT LEVEL HVAC PLAN - AREA D
M101E	EVENT LEVEL HVAC PLAN - AREA E
M101F	EVENT LEVEL HVAC PLAN - AREA F
M101G	EVENT LEVEL HVAC PLAN - AREA G
M102	CLUB LEVEL HVAC PLAN - OVERALL
M102A	CLUB LEVEL HVAC PLAN - AREA A
M102B	CLUB LEVEL HVAC PLAN - AREA B
M102C	CLUB LEVEL HVAC PLAN - AREA C
M102D	CLUB LEVEL HVAC PLAN - AREA D
M102E	CLUB LEVEL HVAC PLAN - AREA E
M102F	CLUB LEVEL HVAC PLAN - AREA F

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M102G	CLUB LEVEL HVAC PLAN - AREA G
M103	CONCOURSE HVAC PLAN - OVERALL
M103A	CONCOURSE HVAC PLAN - AREA A
M103B	CONCOURSE HVAC PLAN - AREA B
M103C	CONCOURSE HVAC PLAN - AREA C
M103D	CONCOURSE HVAC PLAN - AREA D
M103E	CONCOURSE HVAC PLAN - AREA E
M103F	CONCOURSE HVAC PLAN - AREA F
M103G	CONCOURSE HVAC PLAN - AREA G
M104	ROOF HVAC PLAN - OVERALL
M104A	ROOF HVAC PLAN - AREA A
M104B	ROOF HVAC PLAN - AREA B
M104C	ROOF HVAC PLAN - AREA C
M104D	ROOF HVAC PLAN - AREA D
M104E	ROOF HVAC PLAN - AREA E
M104F	ROOF HVAC PLAN - AREA F
M104G	ROOF HVAC PLAN - AREA G
PLUMBING	
P001	SYMBOLS, LEGENDS AND ABBREVIATIONS
P002	EQUIPMENT SCHEDULES
P100	PLUMBING SITE PLAN
P101U	UNDERGROUND PLUMBING PLAN - OVERALL
P101AU	UNDERGROUND PLUMBING PLAN - AREA A
P101BU	UNDERGROUND PLUMBING PLAN - AREA B
P101CU	UNDERGROUND PLUMBING PLAN - AREA C
P101DU	UNDERGROUND PLUMBING PLAN - AREA D
P101EU	UNDERGROUND PLUMBING PLAN - AREA E
P101FU	UNDERGROUND PLUMBING PLAN - AREA F
P101GU	UNDERGROUND PLUMBING PLAN - AREA G
P101	EVENT LEVEL PLUMBING PLAN - OVERALL
P101A	EVENT LEVEL PLUMBING PLAN - AREA A
P101B	EVENT LEVEL PLUMBING PLAN - AREA B

PAGES 25-26 INTENTIONALLY LEFT BLANK

ELLERBE BECKET



E301	EVENT LEVEL LIGHTING PLAN - OVERALL
E301A	EVENT LEVEL LIGHTING PLAN - AREA A
E301B	EVENT LEVEL LIGHTING PLAN - AREA B
E301C	EVENT LEVEL LIGHTING PLAN - AREA C
E301D	EVENT LEVEL LIGHTING PLAN - AREA D
E301E	EVENT LEVEL LIGHTING PLAN - AREA E
E301F	EVENT LEVEL LIGHTING PLAN - AREA F
E301G	EVENT LEVEL LIGHTING PLAN - AREA G
E302	CLUB LEVEL LIGHTING PLAN - OVERALL
E302A	CLUB LEVEL LIGHTING PLAN - AREA A
E302B	CLUB LEVEL LIGHTING PLAN - AREA B
E302C	CLUB LEVEL LIGHTING PLAN - AREA C
E302D	CLUB LEVEL LIGHTING PLAN - AREA D
E302E	CLUB LEVEL LIGHTING PLAN - AREA E
E302F	CLUB LEVEL LIGHTING PLAN - AREA F
E302G	CLUB LEVEL LIGHTING PLAN - AREA G
E303	CONCOURSE LIGHTING PLAN - OVERALL
E303A	CONCOURSE LIGHTING PLAN - AREA A
E303B	CONCOURSE LIGHTING PLAN - AREA B
E303C	CONCOURSE LIGHTING PLAN - AREA C
E303D	CONCOURSE LIGHTING PLAN - AREA D
E303E	CONCOURSE LIGHTING PLAN - AREA E
E303F	CONCOURSE LIGHTING PLAN - AREA F
E303G	CONCOURSE LIGHTING PLAN - AREA G
E304	ROOF LIGHTING PLAN - OVERALL
E304A	ROOF LIGHTING PLAN - AREA A
E304B	ROOF LIGHTING PLAN - AREA B
E304C	ROOF LIGHTING PLAN - AREA C
E304D	ROOF LIGHTING PLAN - AREA D
E304E	ROOF LIGHTING PLAN - AREA E
E304F	ROOF LIGHTING PLAN - AREA F
E304G	ROOF LIGHTING PLAN - AREA G
E501	ONE-LINE DIAGRAM

ELLERBE BECKET



EL101 SITE PLAN LIGHTING  
EL102 SITE PLAN LIGHTING CALCULATIONS

Exhibit F

## Option B Expansion Plans

Option B Expansion Plans means the Multnomah Athletic Club Master Plan Briefing Pack prepared by Zimmer Gunsul Frasca Architects LLP (“ZGF”) updated January 19, 2010. This concept design is derived from the Option B Expansion Plan developed in 2007 and 2008 during the MAC Facility Master Plan process. It has been revised in response to the New Improvements Plans to reduce conflicts between the two projects.

The Option B Structural Support System means the concept therefore described in the report entitled “Multnomah Athletic Club North Expansion, Steel Option” dated December 1, 2009 and revised January 20, 2010 prepared by KPFF, Inc.



## Multnomah Athletic Club North Expansion

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### Steel Option

December 1, 2009

*Revised January 20, 2010*

Attached are sketches SK-1, SK-2, and SK-3 for a steel option to support the North Expansion. Nine steel moment frames could be used in the north-south direction to resist lateral forces. The frames could be located to align with every other existing column to give a maximum spacing of 46 feet without intermediate columns. The frames adjacent to Phase I could have a bay size of approximately 28 feet with a 15-foot maximum cantilever. The frames adjacent to Phase II could have a bay size of approximately 42 feet with no cantilever. The frame beams and columns will likely be W24 and W27 sections respectively to attain adequate stiffness. Steel braced frames located adjacent to the existing building could be used in the east-west direction for lateral resistance. As an option, it might be possible to use steel moment frames in the east-west direction also. Typical floor framing could consist of W24 beams east-west at 10 feet on center maximum supporting 3 inch deck and 2-1/2" topping.

The advantage of steel framing over concrete is that it is lighter in weight and the steel moment frames are more ductile than concrete shear walls. The resulting seismic forces are about one-third of the concrete scheme which will reduce the foundation requirements. The steel scheme may also allow building of the North Expansion more or less independently from the PGE Park Expansion. Some possible drawbacks of the steel scheme could be as follows:

- The steel and deck will likely require fireproofing
- The seismic joint adjacent to the existing building will need to be wider to accommodate larger story drifts (steel moment frames are much more flexible than concrete shear walls).
- Some of the moment frame columns will land on or near the existing roadway retaining wall which will probably necessitate its rebuilding (however, this may have to occur anyway).
- Floor vibration in exercise areas may be an issue for long span areas.

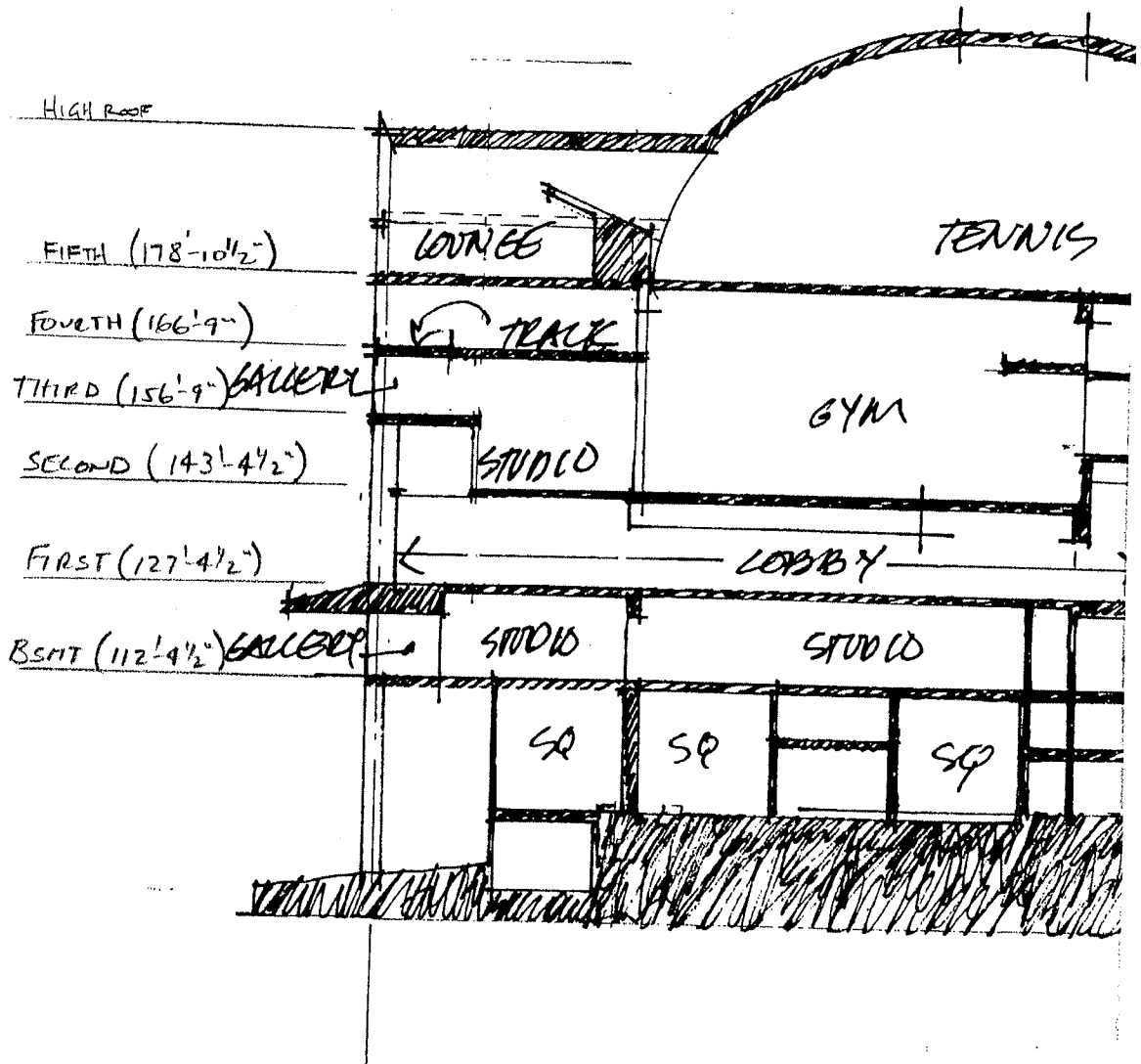
183516

SK-1

KPFF

12-1-09

REV 1-20-10



SECTION AT PHASE II



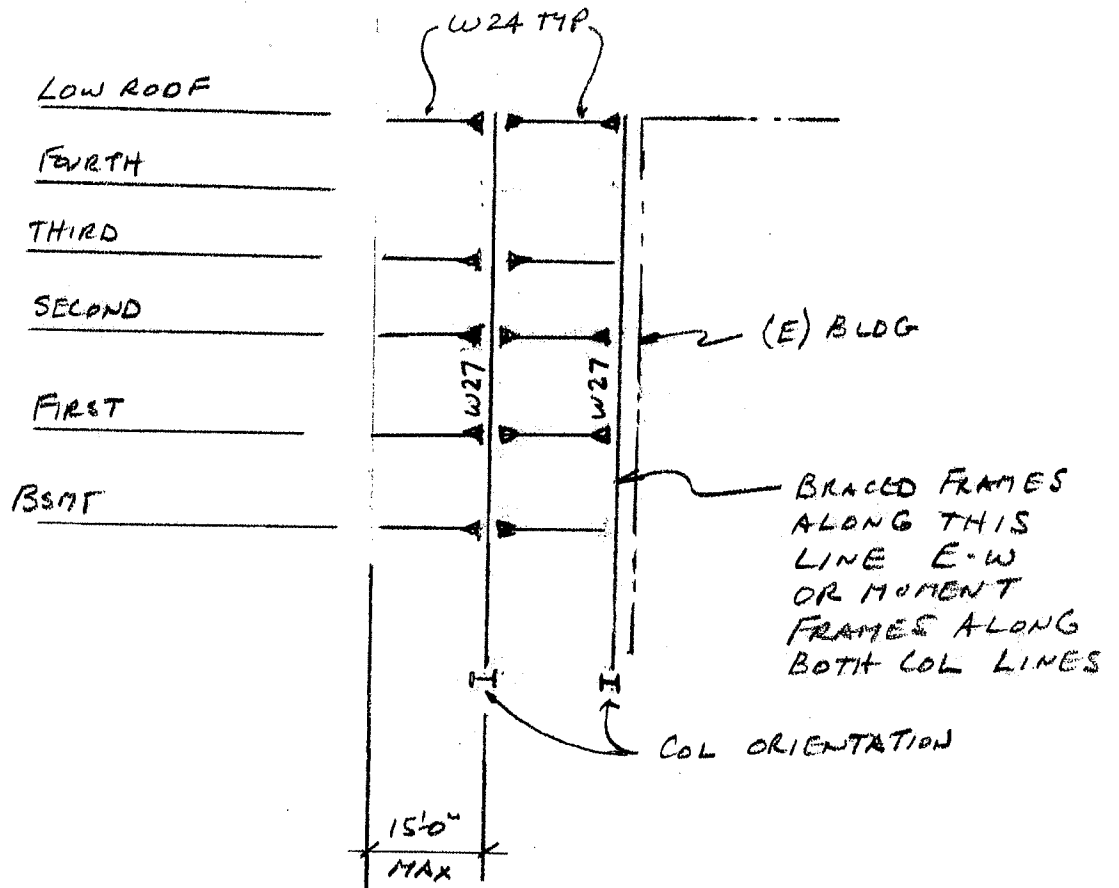
183516

SK-2

KPFF

12-1-09

REV 1-20-10



STEEL MOMENT FRAME ELEVATION

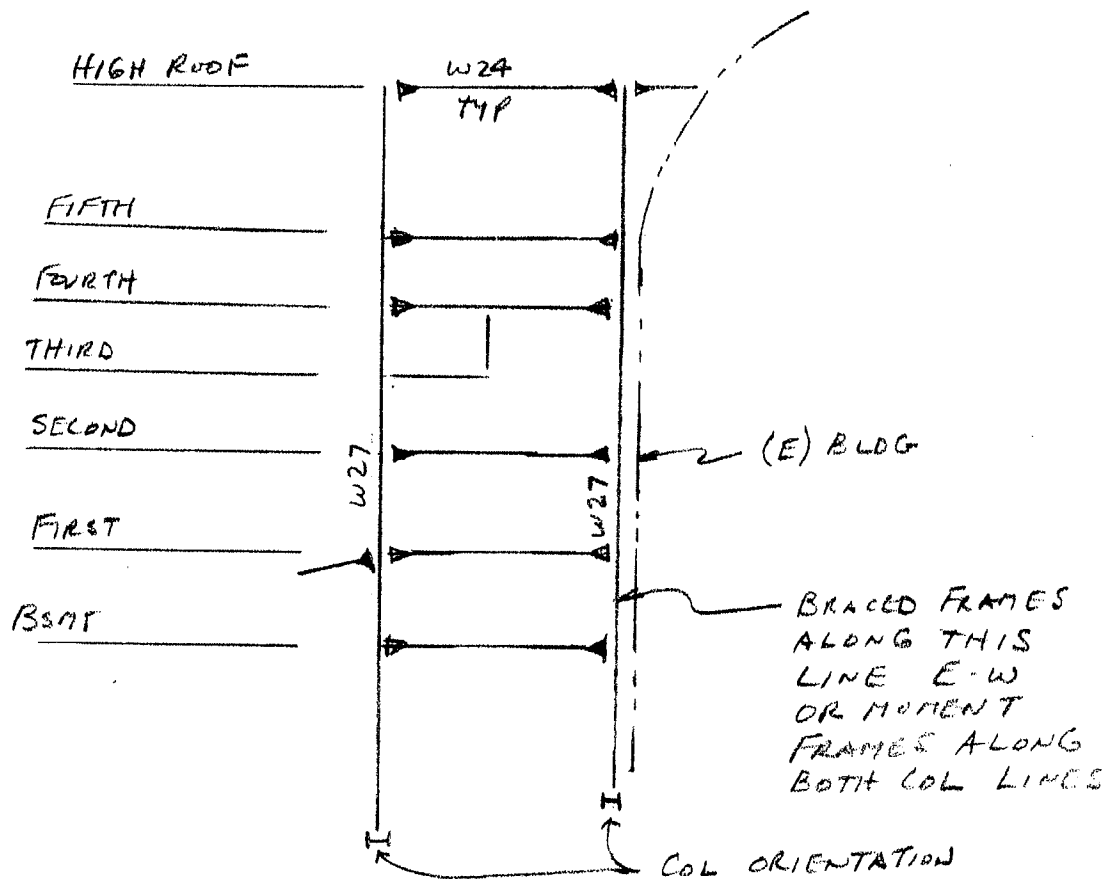
TYP (3) LOCATIONS  
IN N-S DIRECTION  
ADJACENT TO PHASE I

183516

SK-3

KPFF

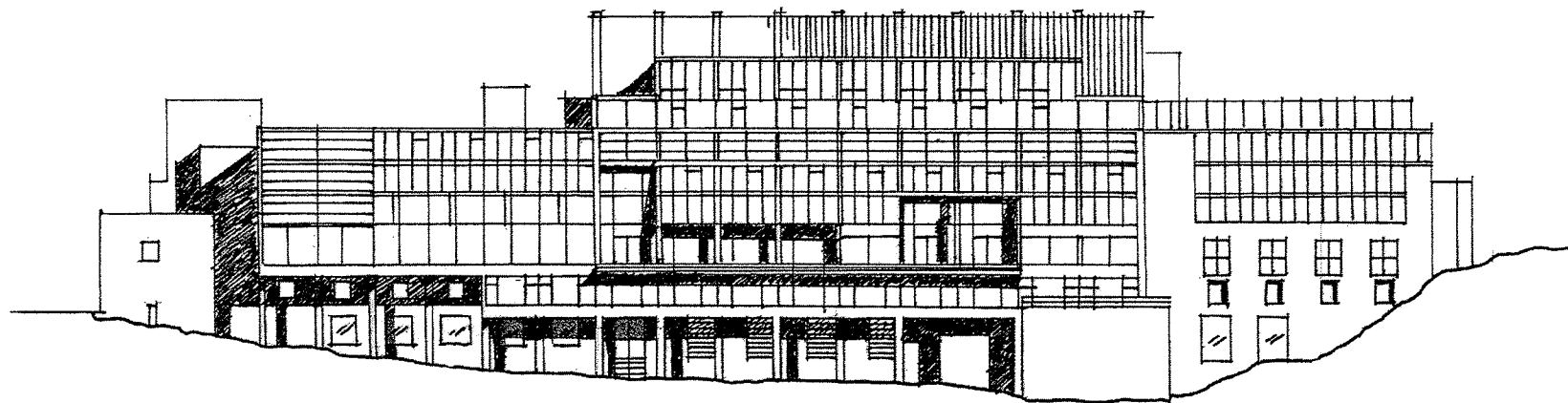
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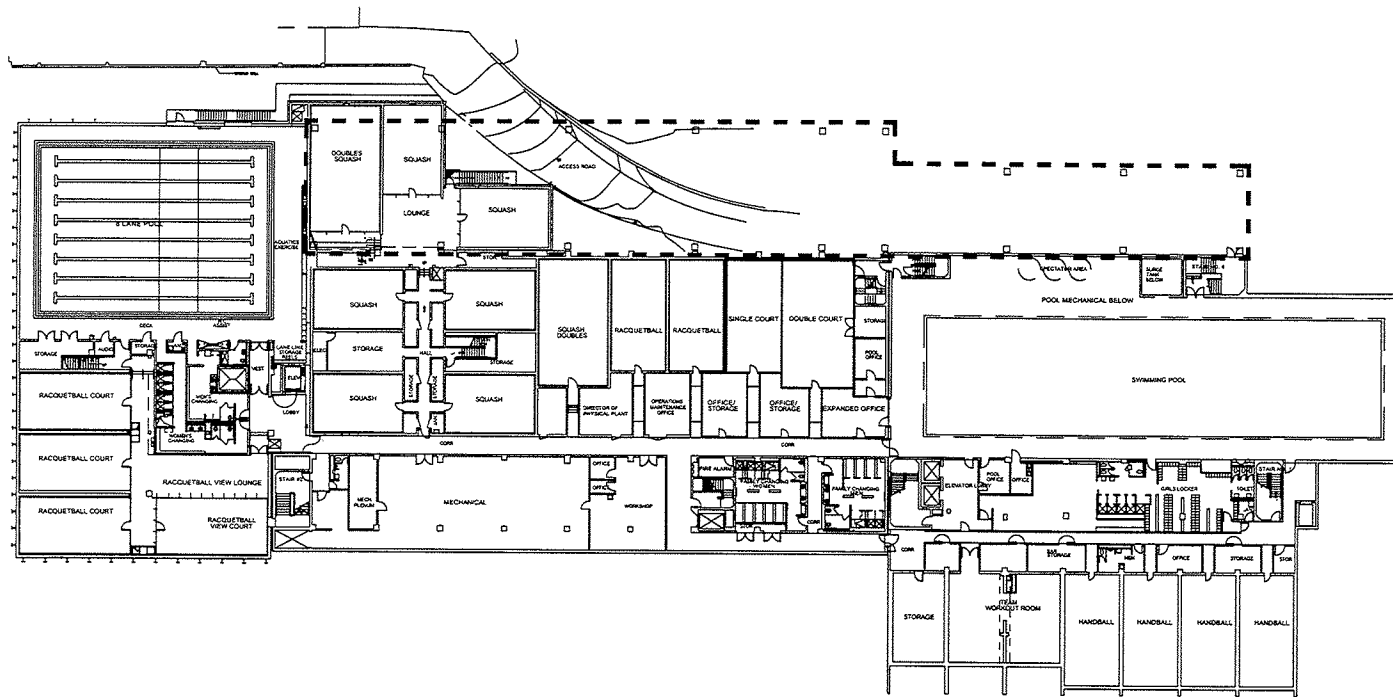
STEEL MOMENT FRAME ELEVATION

TYP (6) LOCATIONS  
IN N-S DIRECTION  
ADJACENT TO PHASE II

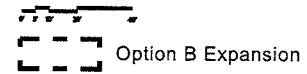
EXHIBIT F  
multnomah athletic club  
option b briefing pack  
updated january 19, 2010

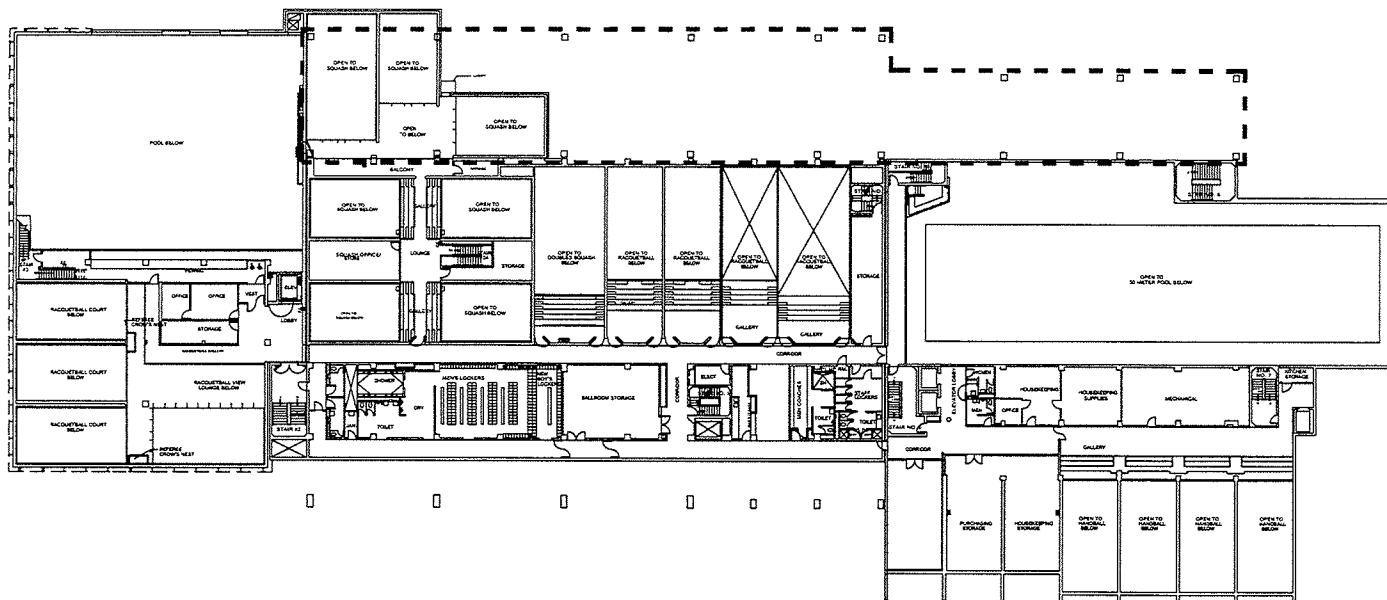


multnomah athletic club  
scheme b: expansion  
proposed north elevation

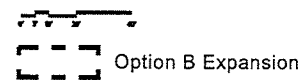


**SUB-BASEMENT FLOOR PLAN**

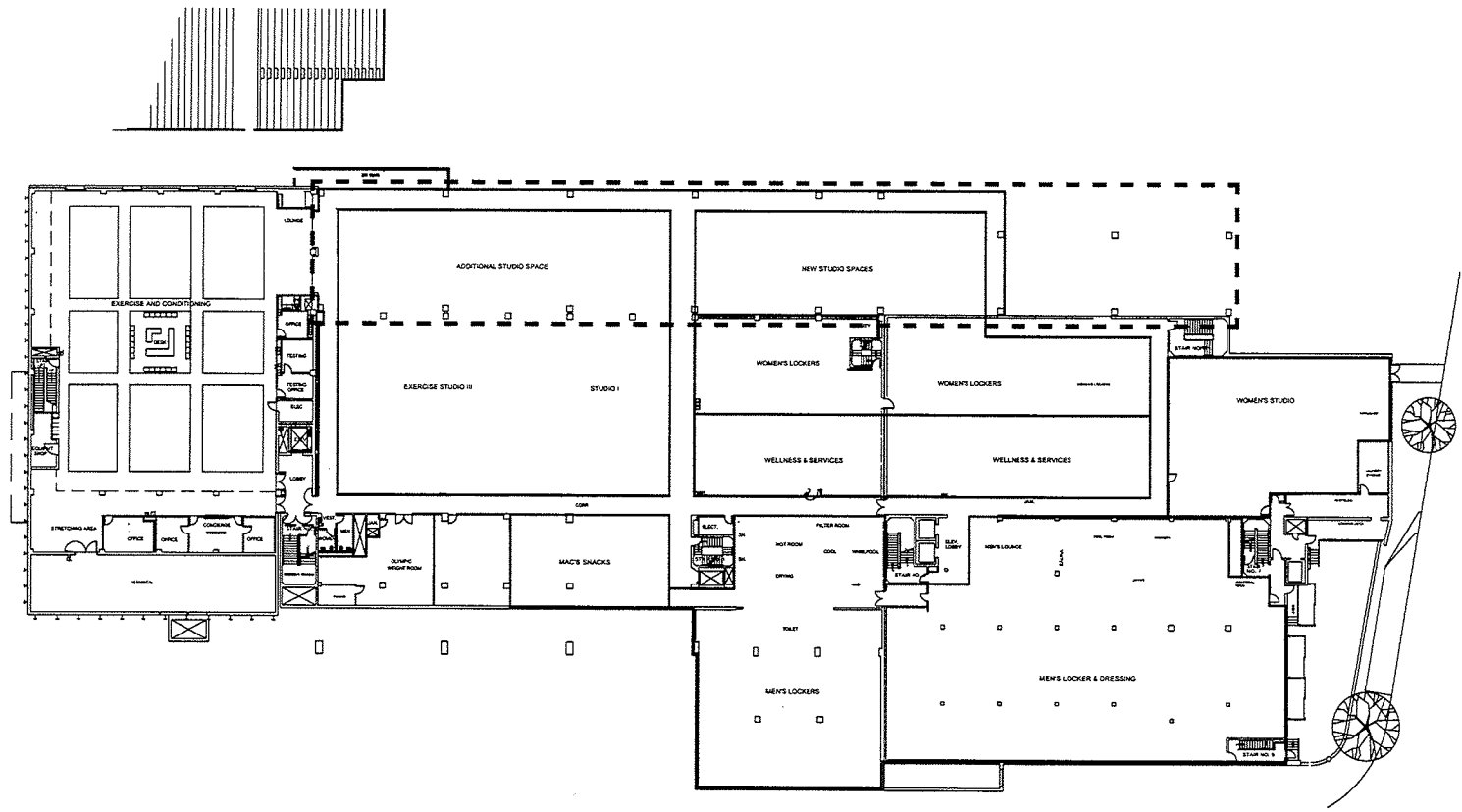




**MEZZANINE LEVEL FLOOR PLAN**




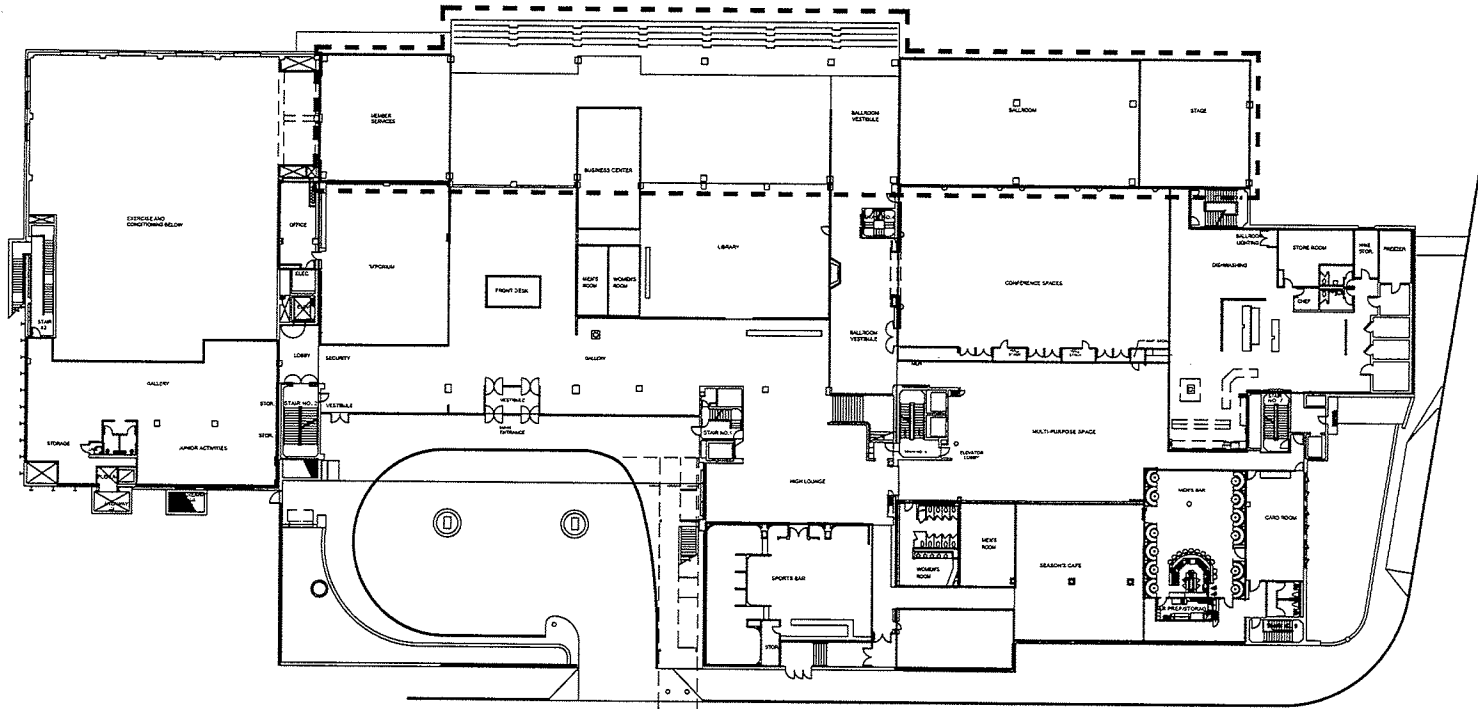
Option B Expansion



**BASEMENT LEVEL FLOOR PLAN**



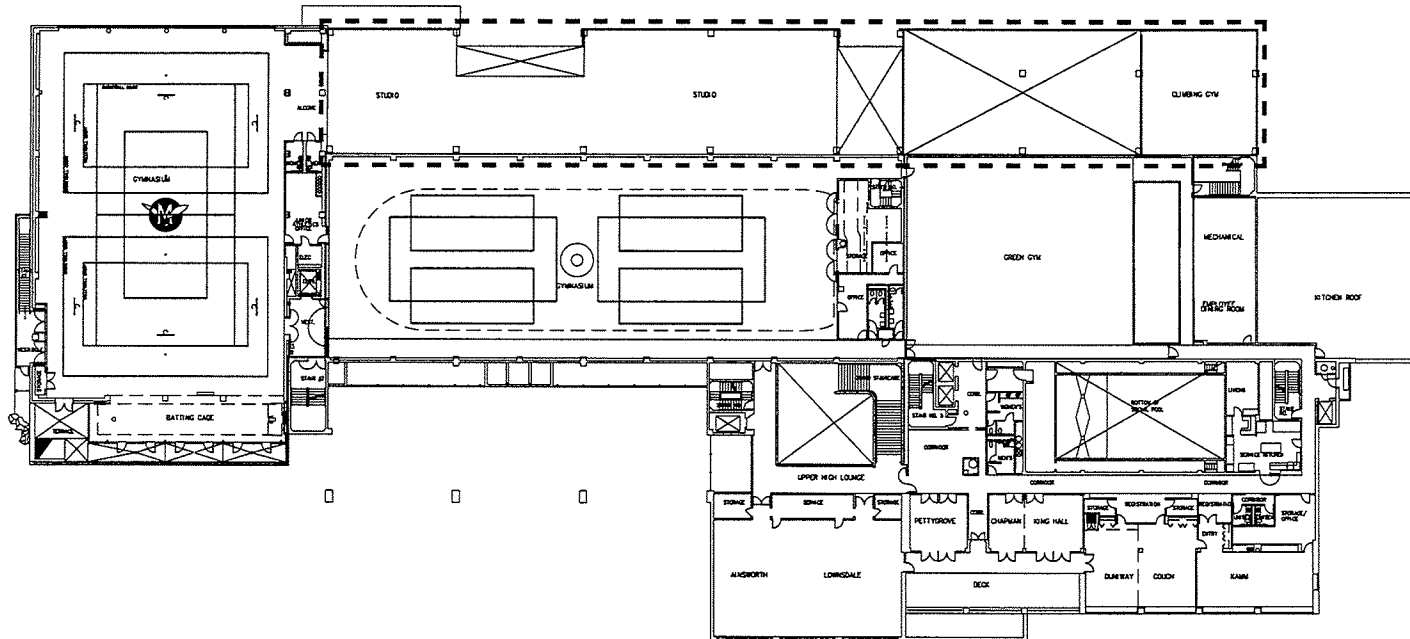
 Option B Expansion



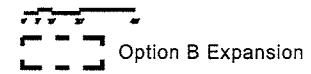
**LEVEL ONE FLOOR PLAN**

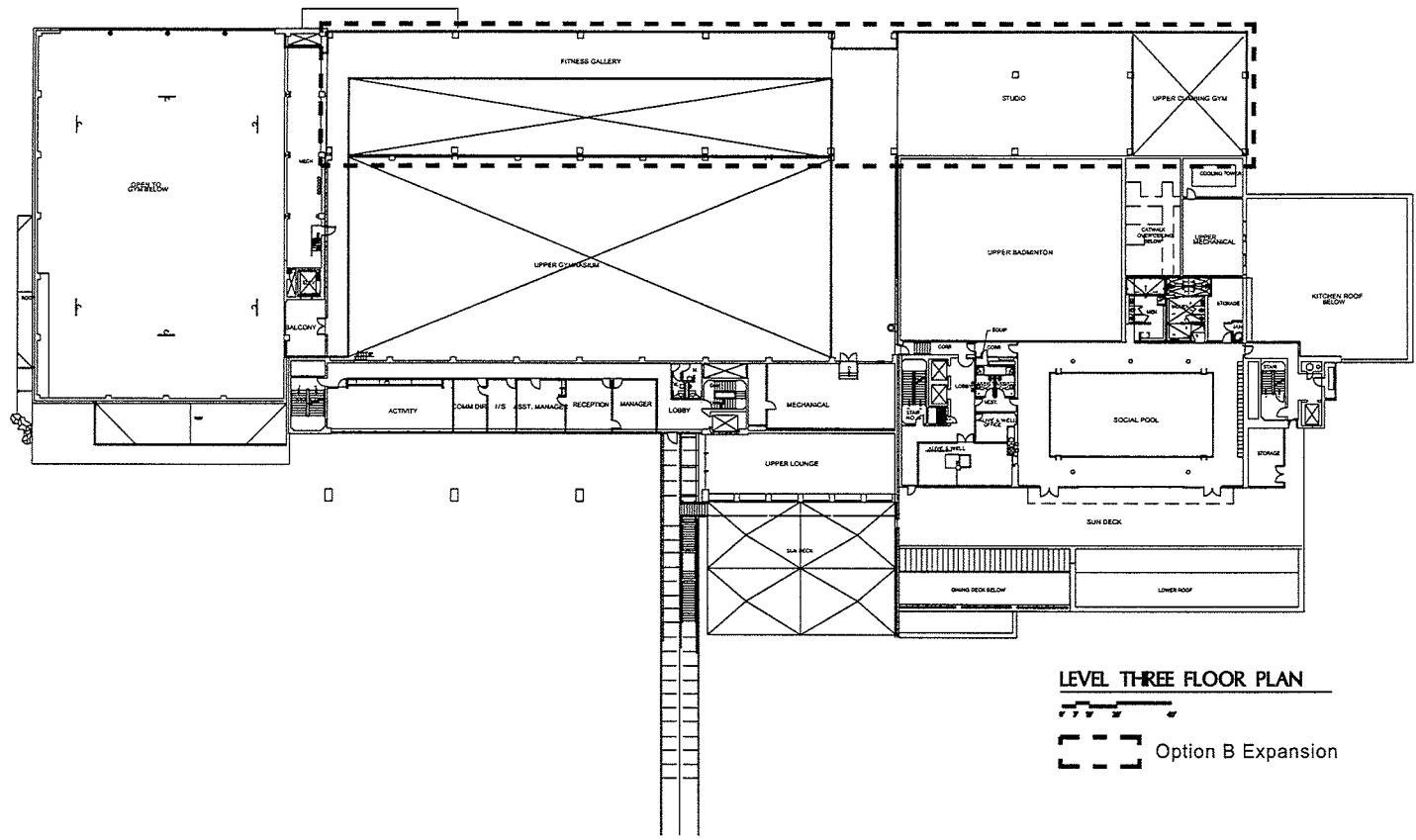
Option B Expansion



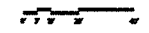


LEVEL TWO FLOOR PLAN

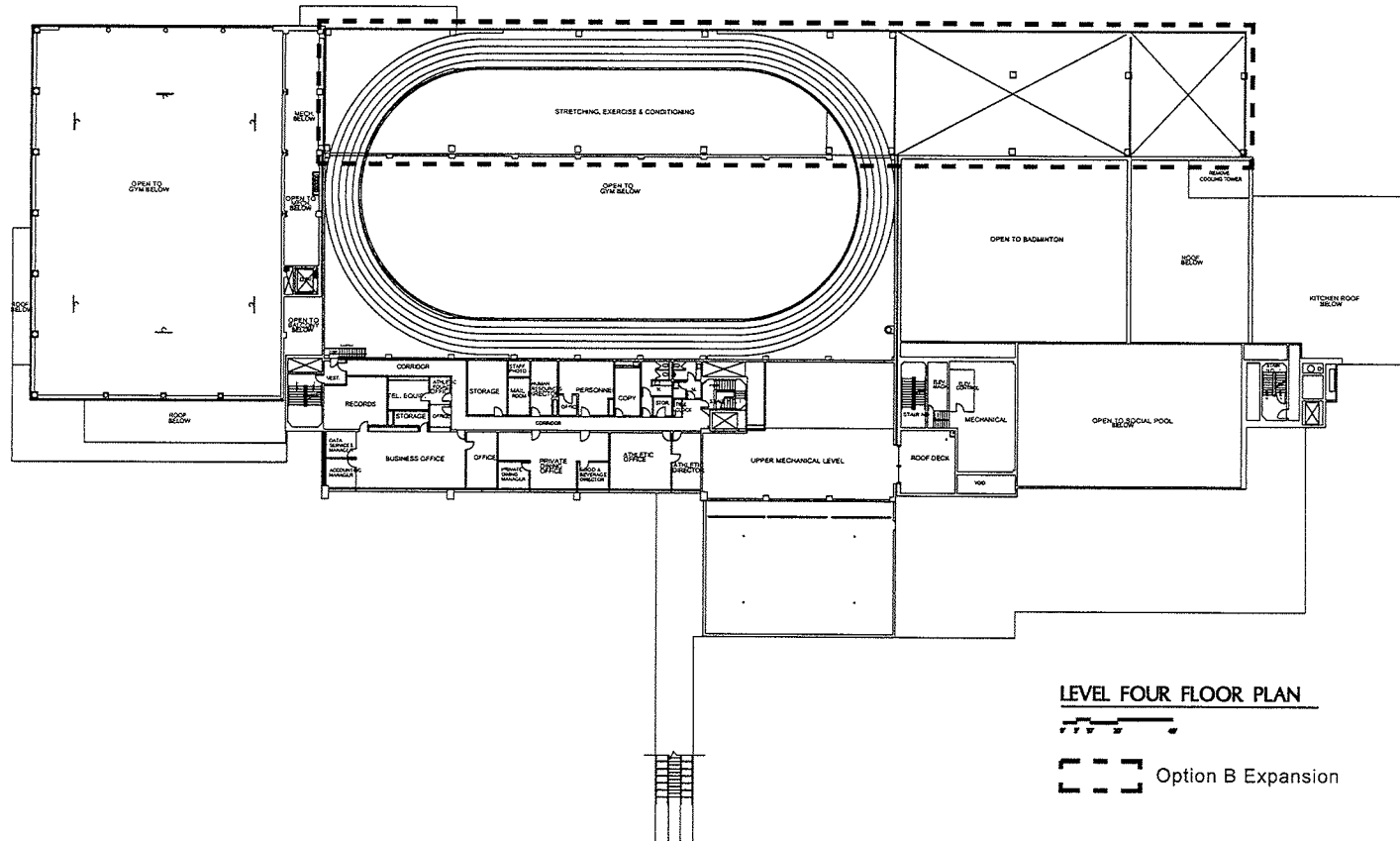




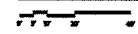
**LEVEL THREE FLOOR PLAN**



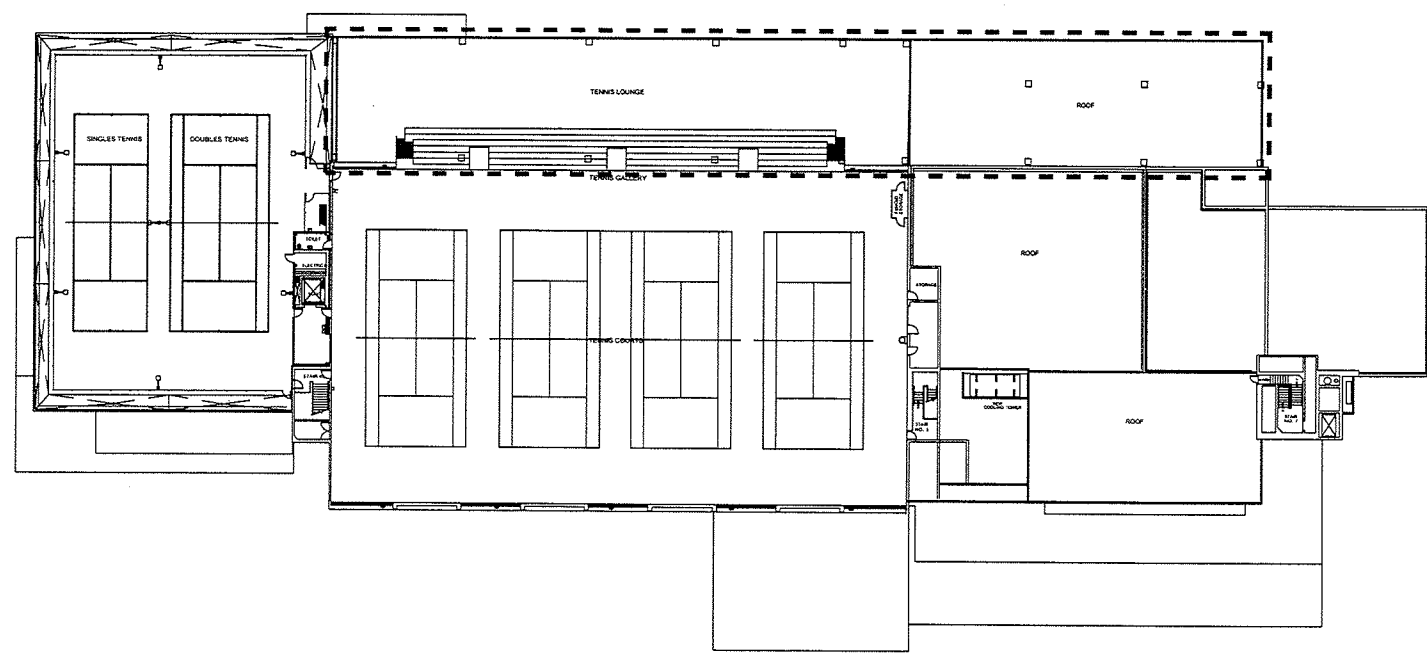
Option B Expansion



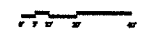
**LEVEL FOUR FLOOR PLAN**



Option B Expansion



LEVEL FIVE FLOOR PLAN



Option B Expansion

**EXHIBIT 6.2.2**  
**License to Use Easement**

After Recording Return To:

Peregrine Sports, LLC  
 1844 SW Morrison Street  
 Portland, Oregon 97205  
 Attn: Merritt Paulson

LICENSE TO USE EASEMENT

DATED: \_\_\_\_\_, 2010

BETWEEN: CITY OF PORTLAND, OREGON, a  
 municipal corporation of the State of Oregon (“City”)

AND: PEREGRINE SPORTS, LLC,  
 a Delaware limited liability company (“Peregrine”)

Recitals:

The City is the owner of the PGE Park located at SW 18<sup>th</sup> Avenue and SW Morrison Street (the “Stadium”). The City has an easement to use property owned by the Multnomah Athletic Club (the “MAC”), located adjacent to the Stadium (the “Easement Area”), based upon an Amended and Restated Easement, dated \_\_\_\_\_, recorded \_\_\_\_\_, 2010 as Document No. \_\_\_\_\_, in the Official Records for Multnomah County, State of Oregon (the “Easement”). The Easement Area is described in the Easement.

The City and Peregrine are parties to that Redevelopment Agreement dated \_\_\_\_\_, 2010 (the “Redevelopment Agreement”) pursuant to which the City and Peregrine have agreed to redevelop the Stadium. In addition, the City and Peregrine are parties to that Stadium Operating Agreement dated \_\_\_\_\_, 2010 pursuant to which the City has engaged Peregrine to manage and operate the Stadium (the “Operating Agreement”).

In order to allow Peregrine to perform its obligations under the Redevelopment Agreement and the Operating Agreement, Peregrine desires, and the City is willing to grant, a license to use the Easement Area, subject to the terms and conditions contained herein.

Agreements:

NOW, THEREFORE, for the consideration set forth in the Redevelopment Agreement and the Operating Agreement, the City and Peregrine agree as follows:

## 1. LICENSE

1.1 License. The City hereby grants Peregrine and its employees, agents, and Retained Parties, during the term (as defined in Section 2 below), the right to use the Easement Area for the redevelopment and operation of the Stadium, on the terms and conditions contained in the Redevelopment Agreement and the Operating Agreement.

1.2 Limitations. The foregoing license is subject to the rights of the City to come onto and use the Easement Area as set forth in the Redevelopment Agreement and Operating Agreement. The license granted to Peregrine is nonexclusive and Peregrine has no possessory or real estate interest in the Easement Area. This license does not grant Peregrine a leasehold estate in the Easement Area.

## 2. TERM

The term of this Agreement shall commence on the date first set forth above (the "Effective Date") and continue until terminated pursuant to the Redevelopment Agreement or Operating Agreement, as applicable.

## 3. COMPLIANCE WITH OTHER AGREEMENTS

Peregrine shall conform to and comply with all requirements and obligations of the Easement, the Redevelopment Agreement and the Operating Agreement. The terms of the aforesaid agreements are incorporated by reference. In addition, Peregrine shall conform to and comply with all requirements and obligations of a condemnation judgment, if any. A breach of the foregoing agreements or a condemnation judgment shall be a default of this Agreement. Peregrine shall indemnify, defend and hold harmless the City and the City Related Persons for, from and against Damages which may be imposed upon, incurred by, or asserted against the City or the City Related Persons by reason of Peregrine's breach of any of the foregoing agreements or a condemnation judgment.

## 4. REMEDIES AND TERMINATION

4.1 Remedies Upon Default. Upon Peregrine's breach of this Agreement, the Easement, the Redevelopment Agreement, or the Operating Agreement, the City shall be entitled to pursue all available and legal and equitable remedies, including, without limitation, injunctive relief, specific performance, damages, termination or any other remedy available under the Redevelopment Agreement or the Operating Agreement, as applicable.

4.2 Condition on Termination. Immediately upon termination of this Agreement, Peregrine shall abandon use of the Easement Area and shall comply with requirements for vacation and restoration of the Easement Area set forth in the Redevelopment Agreement or the Operating Agreement, as applicable. All obligations of Peregrine not completed prior to termination of this Agreement shall survive termination.

5. GENERAL PROVISIONS

5.1 Defined Terms. Capitalized words, which are not the first word of a sentence, are defined terms. Some defined terms are defined in the text of this Agreement and other defined terms used in this Agreement are defined in the Redevelopment Agreement or the Operating Agreement.

5.2 Relationship of Parties. No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant relationship, a principal-agent relationship, or any other relationship between City and Peregrine other than that of licensor and licensee.

IN WITNESS WHEREOF, Peregrine and City have executed this Agreement as of the date first set forth above.

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

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Auditor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Meng, City Attorney



STATE OF OREGON            )  
                                      ) ss.  
County of Multnomah         )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010 by the Honorable Sam Adams, who is the Mayor of the City of Portland, Oregon, a municipal corporation of the State of Oregon, on behalf of the City of Portland.

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

STATE OF OREGON            )  
                                      ) ss.  
County of Multnomah         )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010 by LaVonne Griffin-Lavade, who is the Auditor of the City of Portland, Oregon, a municipal corporation of the State of Oregon, on behalf of the City of Portland.

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

Peregrine:

PEREGRINE SPORTS, LLC, a Delaware limited liability company

\_\_\_\_\_  
By: H. Merritt Paulson III

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by H. Merritt Paulson III, who is Manager of Peregrine Sports, LLC, a Delaware limited liability company.

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

**EXHIBIT 6.3****Existing Agreements**

1. Operating Agreement for PGE Park between City of Portland and Beavers PCL Baseball, LLC, effective January 1, 2006.
2. Assignment and Assumption Agreement between Beavers PCL Baseball, LLC and Shortstop, LLC, dated June 1, 2007.
3. Consent of City of Portland To Transfer, Change of Control And/Or Change of Stadium Manager (undated), executed by Beavers PCL Baseball, LLC, Shortstop, LLC, and the City of Portland.
4. Food Service License Agreement between Volume Services, Inc., d/b/a Centerplate, a Delaware corporation, and Shortstop, LLC, dated March 23, 2005, as amended September 9, 2008.
5. Licensed User Agreement between Ticketmaster, L.L.C., a Virginia limited liability company, and Beavers PCL Baseball L.L.C., a Delaware limited liability company, dated January 1, 2007, and assigned to Shortstop, LLC on June 1, 2007.
6. Location Agreement between Shortstop, LLC and Water Closet Media Incorporated, an Oregon corporation, dated January 27, 2009 and effective through December 31, 2010.
7. Agreement between Shortstop, LLC and Metro West Ambulance, dated January 20, 2009.
8. Agreement between Shortstop, LLC and Coast to Coast Event Services, Inc., dated April 10, 2008.
9. All sponsorship agreements between Shortstop, LLC and a sponsor that are on file at the offices of Shortstop, LLC and are in effect as of the Closing Date.

**EXHIBIT 10.1**

**INITIAL PROJECT BUDGET**



## PGE Park MLS Renovation - Budget Summary

ID #	Group	Budget Estimate 9/1/2009	Client Approved Adjustments	Contingency Allocation/ Budget Transfers	Approved Budget 12/21/2009	Committed	Uncommitted	Potential Exposures	Projected Cost	Variance from Adjusted Costs
<b>Building Design &amp; Construction Budget</b>										
100	START-UP EXPENSES	\$ 100,000		\$ (100,000)						
200	SALES & MARKETING	\$ 100,000		\$ (100,000)						
300	LAND ACQUISITION & SITE DEVELOPMENT		\$ 240,000		\$ 240,000		\$ 240,000		\$ 240,000	
400	DESIGN/PROFESSIONAL SERVICES	\$ 3,083,100			\$ 3,083,100	\$ 2,458,066	\$ 625,034		\$ 3,083,100	
500	LEGAL & GOVERNMENTAL SERVICES	\$ 100,000		\$ (100,000)						
600	PROJECT ADMINISTRATION	\$ 1,432,860		\$ 50,000	\$ 1,482,860	\$ 995,860	\$ 487,000		\$ 1,482,860	
700	CONSTRUCTION	\$ 19,825,000	\$ (590,000)	\$ 580,100	\$ 19,815,100		\$ 19,815,100		\$ 19,815,100	
750	SYSTEMS & EQUIPMENT	\$ 3,385,000			\$ 3,385,000		\$ 3,385,000		\$ 3,385,000	
800	PERMITS, TESTING, FEES & SPECIAL TAXES	\$ 150,000	\$ 350,000		\$ 500,000		\$ 500,000		\$ 500,000	
900	INSURANCE, FINANCING & TRANSACTION COSTS	\$ 280,100		\$ (280,100)						
	<i>Sub Total</i>	<b>\$ 28,456,060</b>			<b>\$ 28,506,060</b>	<b>\$ 3,453,926</b>	<b>\$ 25,052,134</b>		<b>\$ 28,506,060</b>	
1000	CONTINGENCY	\$ 2,700,000		\$ (50,000)	\$ 2,650,000				\$ 2,650,000	
<b>TOTAL BUDGET</b>		<b>\$ 31,156,060</b>			<b>\$ 31,156,060</b>	<b>\$ 3,453,926</b>	<b>\$ 25,052,134</b>		<b>\$ 31,156,060</b>	

## Building Design & Construction Budget

ID #	Item Description	Budget Estimate 9/1/2009	Client Approved Adjustments	Contingency Allocation/ Budget Transfers	Approved Budget 12/21/2009	Committed	Uncommitted	Potential Exposures	Projected Cost	Variance from Adjusted Costs
<b>100</b>	<b>START-UP EXPENSES</b>									
105	Election Expenses									
110	Project Feasibility Analysis									
115	Arena Revenue (CQI) Study									
120	Property Assessment / Valuation									
125	Property Tax Assessment									
130	Project Financial Advisor									
135	Public Relations									
140	Political Consulting / Lobbying									
145	Food Service / Concessions Deal Consultant									
150	Research and Polling									
190	Other	\$ 100,000		\$ [100,000]	\$ -		\$ -	\$ -	\$ -	\$ -
	<i>Sub Total</i>	<b>\$ 100,000</b>		<b>\$ [100,000]</b>						
<b>200</b>	<b>SALES &amp; MARKETING</b>									
210	Sales and Marketing Consultant									
240	Premium Seating Marketing Expenses									
250	Preopening and Grand Opening Expenses									
290	Other Marketing Expenses	\$ 100,000		\$ [100,000]	\$ -		\$ -	\$ -	\$ -	\$ -
	<i>Sub Total</i>	<b>\$ 100,000</b>		<b>\$ [100,000]</b>						
<b>300</b>	<b>LAND ACQUISITION &amp; SITE DEVELOPMENT</b>									
310	Land Acquisition - Procurement Agent									
320	Title, fees, Interest, Misc									
330	Property Taxes, Land carrying costs									
335	Condemnation Contingency									
340	Business Displacement Costs									
350	Street Closures & Utility Relocation									
360	Electrical Utility Relocation									
370	Other Site Development Costs & Landscaping									
375	2% for Art		\$ 240,000		\$ 240,000		\$ 240,000	\$ -	\$ 240,000	\$ -
	<i>Sub Total</i>		<b>\$ 240,000</b>		<b>\$ 240,000</b>		<b>\$ 240,000</b>		<b>\$ 240,000</b>	
<b>400</b>	<b>DESIGN/PROFESSIONAL SERVICES</b>									
405	Design Architect - Ellerbe Becket Design Fees	\$ 2,092,500			\$ 2,092,500	\$ 2,092,500	\$ -	\$ -	\$ 2,092,500	\$ -
406	Design Architect - Ellerbe Becket Reimbursables	\$ 300,000			\$ 300,000	\$ 300,000	\$ -	\$ -	\$ 300,000	\$ -
430	Site Surveying - Shaw	\$ 35,000			\$ 35,000	\$ 10,966	\$ 24,034	\$ -	\$ 35,000	\$ -
435	Building Commissioning	\$ 50,000			\$ 50,000		\$ 50,000	\$ -	\$ 50,000	\$ -
440	LEED Certification Process Mgmt	\$ 75,000			\$ 75,000		\$ 75,000	\$ -	\$ 75,000	\$ -
445	Tel/ Data & Security Consultant									

ID #	Item Description	Budget Estimate 9/1/2009	Client Approved Adjustments	Contingency Allocation/ Budget Transfers	Approved Budget 12/21/2009	Committed	Uncommitted	Potential Exposures	Projected Cost	Variance from Adjusted Costs
450	Additional Graphics Design									
455	Foodservice Design	\$ 50,000			\$ 50,000		\$ 50,000	\$ -	\$ 50,000	\$ -
460	Environmental Phase I Investigations - Shaw	\$ 5,600			\$ 5,600	\$ 5,600	\$ -	\$ -	\$ 5,600	\$ -
465	Environmental Remediation	\$ 150,000			\$ 150,000		\$ 150,000	\$ -	\$ 150,000	\$ -
470	Geotechnical Report/Ground Water Analysis - Shaw	\$ 75,000			\$ 75,000	\$ 49,000	\$ 26,000	\$ -	\$ 75,000	\$ -
475	Signage Consultant									
480	ADA Consultant									
490	Traffic and Parking Studies	\$ 100,000			\$ 100,000		\$ 100,000	\$ -	\$ 100,000	\$ -
491	Other Design-Related Consultants	\$ 150,000			\$ 150,000		\$ 150,000	\$ -	\$ 150,000	\$ -
	<b>Sub Total</b>	<b>\$ 3,083,100</b>			<b>\$ 3,083,100</b>	<b>\$ 2,458,066</b>	<b>\$ 625,034</b>		<b>\$ 3,083,100</b>	
<b>500</b>	<b>LEGAL &amp; GOVERNMENTAL SERVICES</b>									
510	Legal Council									
520	Legal Services (Land Acquisition)									
530	Legal Services (Construction Related)									
540	City Facilitator Services (Zoning & Permits)									
590	Other	\$ 100,000		\$ (100,000)	\$ -		\$ -	\$ -	\$ -	\$ -
	<b>Sub Total</b>	<b>\$ 100,000</b>		<b>\$ (100,000)</b>						
<b>600</b>	<b>PROJECT ADMINISTRATION</b>									
605	Developers Fees									
610	City 'other' Consultants									
615	City Representative	\$ 200,000		\$ 50,000	\$ 250,000		\$ 250,000	\$ -	\$ 250,000	\$ -
620	ICON Venue Group - Program Mgmt	\$ 895,860			\$ 895,860	\$ 895,860	\$ -	\$ -	\$ 895,860	\$ -
621	ICON Venue Group - Reimbursables	\$ 100,000			\$ 100,000	\$ 100,000	\$ -	\$ -	\$ 100,000	\$ -
625	Discretionary Fees	\$ 237,000			\$ 237,000		\$ 237,000	\$ -	\$ 237,000	\$ -
630	Public Relations Consultant									
635	Team Owner's Rep and Peer Reviews									
640	ICON/EB/TCCo Project Office Build-out Expense	in GC's		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
645	Furniture, Fixtures, & Equipment (ICON/EB/TCCo office)	in GC's		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
650	Rent Expense	in GC's		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
655	ICON Operating Expenses	in 620		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
660	ICON Equipment/Computer Maintenance	in 621		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
665	ICON Printing/Reproduction Expenses	in 621		\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
690	Other Administrative Expenses									
	<b>Sub Total</b>	<b>\$ 1,432,860</b>		<b>\$ 50,000</b>	<b>\$ 1,482,860</b>	<b>\$ 995,860</b>	<b>\$ 487,000</b>		<b>\$ 1,482,860</b>	
<b>700</b>	<b>CONSTRUCTION</b>									
710	Hard Construction Cost First Off Season	\$ 1,325,000		\$ 300,000	\$ 1,625,000	\$ -	\$ 1,625,000	\$ -	\$ 1,625,000	\$ -
720	Hard Construction Cost Second off Season	\$ 18,500,000	\$ (590,000)		\$ 17,910,000		\$ 17,910,000	\$ -	\$ 17,910,000	\$ -
735	Preconstruction Fees									
740	Construction Changes									
745	Club Space Build-out									

ID #	Item Description	Budget Estimate 9/1/2009	Client Approved Adjustments	Contingency Allocation/ Budget Transfers	Approved Budget 12/21/2009	Committed	Uncommitted	Potential Exposures	Projected Cost	Variance from Adjusted Costs
750	North end screen									
755	Bench seat replacement west									
760	Bench Seat replacement north									
	P&P Bond xfer			\$ 205,100	\$ 205,100	\$ 205,100	\$ -	\$ 205,100	\$ -	\$ -
	Builders Risk xfer			\$ 75,000	\$ 75,000	\$ 75,000	\$ -	\$ 75,000	\$ -	\$ -
	<i>Sub Total</i>	<b>\$ 19,825,000</b>	<b>\$ [590,000]</b>	<b>\$ 580,100</b>	<b>\$ 19,815,100</b>	<b>\$ 19,815,100</b>		<b>\$ 19,815,100</b>	<b>\$ 19,815,100</b>	
<b>750</b>	<b>SYSTEMS &amp; EQUIPMENT</b>									
751	Concession Build-out (equipment only)	\$ 200,000			\$ 200,000	\$ 200,000	\$ -	\$ 200,000	\$ -	\$ -
752	Concession Personal Equipment & Smallwares	provided by Centerplate			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
755	Stadium Technical Systems	\$ 600,000			\$ 600,000	\$ 600,000	\$ -	\$ 600,000	\$ -	\$ -
760	Building/Owner FF&E	\$ 510,000			\$ 510,000	\$ 510,000	\$ -	\$ 510,000	\$ -	\$ -
765	Telecommunications Systems									
770	Training and Weight room Equipment	\$ 125,000			\$ 125,000	\$ 125,000	\$ -	\$ 125,000	\$ -	\$ -
775	Conservation Laboratory Equipment									
780	Scoreboard Systems / LED Panels	\$ 1,950,000			\$ 1,950,000	\$ 1,950,000	\$ -	\$ 1,950,000	\$ -	\$ -
785	Video Display Systems									
790	1.5% Solar	Not in Project			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<i>Sub Total</i>	<b>\$ 3,385,000</b>			<b>\$ 3,385,000</b>	<b>\$ 3,385,000</b>		<b>\$ 3,385,000</b>	<b>\$ 3,385,000</b>	
<b>800</b>	<b>PERMITS, TESTING, FEES &amp; SPECIAL TAXES</b>									
801	Building Permit Fees/ Approvals	included in 710 and 720			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
805	Independent Testing Fees	\$ 150,000			\$ 150,000	\$ 150,000	\$ -	\$ 150,000	\$ -	\$ -
810	Water Tap Fees									
815	Sanitary Sewer Utility Fees									
816	Utility Deposits									
820	Electrical Distribution Design/Improvements									
825	Gas Distribution Design/Improvements									
830	Wastewater Distribution Design/Improvements									
835	Wastewater Improvement Fees									
840	Telephone/Cable TV Distribution Design/Improvements									
845	Telephone Main Extension									
850	Value Added Tax									
855	System Development Charges		\$ 350,000		\$ 350,000	\$ 350,000	\$ -	\$ 350,000	\$ -	\$ -
	<i>Sub Total</i>	<b>\$ 150,000</b>	<b>\$ 350,000</b>		<b>\$ 500,000</b>	<b>\$ 500,000</b>		<b>\$ 500,000</b>	<b>\$ 500,000</b>	



ID #	Item Description	Budget Estimate 9/1/2009	Client Approved Adjustments	Contingency Allocation/ Budget Transfers	Approved Budget 12/21/2009	Committed	Uncommitted	Potential Exposures	Projected Cost	Variance from Adjusted Costs
<b>900</b>	<b>INSURANCE, FINANCING &amp; TRANSACTION COSTS</b>									
910	Builder's Risk Insurance	\$ 75,000		\$ (75,000)	\$ -		\$ -	\$ -	\$ -	\$ -
920	Financing Costs									
930	Payment & Performance Bonds	\$ 205,100		\$ (205,100)	\$ -		\$ -	\$ -	\$ -	\$ -
940	Capitalized Relocation Expenses									
950	Capital Improvement Reserve Fund									
	<i>Sub Total</i>	\$ 280,100		\$ (280,100)						
<b>Group Totals</b>		\$ 28,456,060		\$ 50,000	\$ 28,506,060	\$ 3,453,926	\$ 25,052,134	\$ -	\$ 28,506,060	\$ -
<b>1000</b>	<b>CONTINGENCY</b>									
1001	Construction Change Order Contingency	\$ 950,000			\$ 950,000				\$ 950,000	
1002	Design Development Contingency	\$ 1,000,000			\$ 1,000,000				\$ 1,000,000	
1003	Project Contingency	\$ 750,000		\$ (50,000)	\$ 700,000				\$ 700,000	
	<i>Sub Total</i>	\$ 2,700,000		\$ (50,000)	\$ 2,650,000				\$ 2,650,000	
<b>MANAGED BUDGET TOTAL</b>		\$ 31,156,060	\$ -	\$ -	\$ 31,156,060	\$ 3,453,926	\$ 25,052,134		\$ 31,156,060	\$ -



**EXHIBIT 11.2.1**

**100% Schematic Design Documents dated October 2, 2009**

G000 - COVER SHEET

G001 - SHEET INDEX, SYMBOLS, ABBREVIATIONS, AND VICINITY MAP

A100 - SITE PLAN

A101 - LEVEL 1 FLOOR PLAN - FIELD LEVEL

A102 - LEVEL 2 FLOOR PLAN - INTERMEDIATE LEVEL

A103 - LEVEL 3 FLOOR PLAN - STREET LEVEL

A104 - OVERALL SEATING BOWL PLAN

A105 - PRESS BOX FLOOR PLAN

A106 - ROOF PLAN

A111 - SEATING CONFIGURATIONS AND SEAT COUNT

A301 - BUILDING ELEVATIONS

A401 - BUILDING SECTIONS

A402 - BUILDING SECTIONS

S101 - LEVEL 1 - FOUNDATION AND FRAMING PLAN

S102 - LEVEL 2 - FRAMING PLAN

S103 - LEVEL 3 - FRAMING PLAN

S104 - CANOPY FRAMING PLAN

S401 - SECTIONS

S402 - SECTIONS

M101 - LEVEL 1 - FIELD LEVEL MECHANICAL

M102 - LEVEL 2 - CLUB LEVEL MECHANICAL

M103 - LEVEL 3 - STREET LEVEL MECHANICAL

M104 - LEVEL 4 - ROOF PLAN MECHANICAL

P101 - LEVEL 1 - FIELD LEVEL PLUMBING

P102 - LEVEL 2 - CLUB LEVEL PLUMBING



P103 - LEVEL 3 - STREET LEVEL PLUMBING

EL101 - SITE PLAN LIGHTING

E101 - LEVEL 1 - FIELD LEVEL ELECTRICAL

E102 - LEVEL 2 - CLUB LEVEL ELECTRICAL

E103 - LEVEL 3 - STREET LEVEL ELECTRICAL

E104 - LEVEL 4 - ROOF LEVEL ELECTRICAL

E105 - ONE-LINE DIAGRAM ELECTRICAL

## EXHIBIT 11.2.2

## Existing FF&amp;E

<u>City Asset Number</u>	<u>Asset Description</u>
50049	SOFT-SERVE DISPENSER
50481	2001 FORD F150 4X4 SUPERCAB XLT
50062	UMBRO DIMENSIONAL ICON
50063	GI JOES DIMENSIONAL ICON
50067	FRED MEYER DIMENSIONAL ICON
50053	MULTI-USE 6X4 GATOR
50054	STADIUM VACUUM GATOR ATTACHMENT
50040	PLATING TABLE WWALTER PICK-UP
50058	MILNOR 55LB WASHER
50059	MILNOR 55LB WASHER
50060	MILNOR 55LB WASHER
50061	MILNOR 55LB WASHER
50055	TENANT 5700 FLOOR SCRUBBER
50056	TENNANT 3640 FLOOR SCRUBBER
50013	GRILL KIOSK
50014	GRILL KIOSK
50015	GRILL KIOSK
50022	PORTABLE SODA FOUNTAIN
50046	TURBOCHEF OVEN
50057	TRASH COMPACTOR
50443	TURBOCHEF OVEN
50074-95	22 TURNSTILES(50074-50095)
50066	LARRY THE LIGHTBULB
50073	PGE PARK NEWSSTAND
50024	BEER COOLER
50025	WALK IN FREEZER
50026	WALK IN COOLER
50027	REFRIGERATION UNIT-BEER SYSTEM
50028	REFRIGERATION UNIT-BEER SYSTEM
50029	REFRIGERATION UNIT-BEER SYSTEM
50030	REFRIGERATION UNIT-BEER SYSTEM
50031	REFRIGERATION UNIT-BEER SYSTEM
50032	REFRIGERATION UNIT-BEER SYSTEM
50033	REFRIGERATION UNIT-BEER SYSTEM
50034	REFRIGERATION UNIT-BEER SYSTEM
50035	REFRIGERATION UNIT-BEER SYSTEM
50036	REFRIGERATION UNIT-BEER SYSTEM
50037	REFRIGERATION UNIT-BEER SYSTEM
50039	ICE MAKE W/BIN
50041	ICE MAKER W/BIN
50042	ICE MAKER W/BIN
50043	ICE MAKER W/BIN
50048	ICE MAKER W/BIN
50050	KEG COOLER
50070	KEG COOLER
50051	ARTICULATED BOOM LIFT
50052	ELECTRIC SCISSOR LIFT
50001	ROASTED PEANUT CART
50002	MERCHANDISE CART
50012	LEMONDADE CART
50016	ROASTED PEANUT CART
50018	KETTLE KORN CART
50020	MERCHANDISE CART
50021	MERCHANDISE CART
50071	PORTABLE EXPRESSO CART
50072	PORTABLE EXPRESSO CART
50442	LEMONDADE CART
A22740	WELLS GRIDDLE
A22741	WELLS FRYER
A22742	WELLS FRYER
A23300	DRAG BRUSH
A23309	CATERPILLAR FORKLIFT MODEL EP20K-USED
A23299	JOHN DEERE TRACTOR
A23296	PAINT SPRAYER
A23297	PAINT EXTRACTOR
A23298	PAINT REMOVER & GROOMER
A23488	Mechanical Spatula for PGE Park Turf
B01608 02	PGE Park-Elevators
B01608 21	PGE Park-Electronic Scoreboard System
B01608	PGE Park Awnings (2 Awnings)
B01608 22	PGE Park Electronic Scoreboard System Addition

The following list was taken from the City's SAP System, Capital Asset Inventory as of 12/31/2009

**Exhibit 11.2.3**  
**New FF&E**

**PGE PARK**

Upgrade Existing Telephone/Data System

Home Team Locker/Training

Furniture

Training Room Equipment

Weight Room Equipment

Hydro-Therapy Built-ins

Hydro-Therapy Potables

Flat Panel TV's – Ten (10)

Team/Ops Office Furniture

Storage Area

Fence/Gates/Shelving

Press Box

Furniture

Flat Panel TV's – Ten (10)

Team Store

Office Furniture

Display Racks

Extend POS

Flat Panel TV's – Four (4)

Club Furniture (including 8 flat screens)

Conference Center furniture

Concourse Group area furniture

General Building Maintenance

Miscellaneous Requirements

---

**Systems and Equipment**

---

Stadium Technical Systems

Audio System

Broadcast Cabling

MATV

Video Production

**ACKNOWLEDGEMENT, RELEASE AND CERTIFICATION**

**1. Acknowledgement:**

Contractor acknowledges that it has been paid the amount of \$ \_\_\_\_\_ on Contract No. \_\_\_\_\_. Final payment remains to be made by the City of Portland.

**2. Release:**

Except for the amount of the final payment that remains to be paid, Contractor releases the City of Portland, its officers, agents and employees from any and all other claims for additional compensation that it does or might have as a result of its performance of work on this contract

**[Or – If a claim exists:]**

Except for the amount of the final payment that remains to be paid, and the Claim for \_\_\_\_\_ submitted to the City in writing dated \_\_\_\_\_, Contractor releases the City of Portland, its officers, agents and employees from any and all other claims for additional compensation or contract time that it does or might have as a result of its performance of work on this contract.

**3. Certification**

Contractor certifies that:

- a) All work required by this Contract is complete;
- b) All amounts due for labor, materials and all other obligations under this Contract were paid by the Contractor except for any payments due after Final Payment by Owner is paid;
- 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's performance and payment bond, or, if no bond was required, by the Contractor itself, 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 13.1**  
**PROJECT SCHEDULE**



### Construction Schedule PGE Park - MLS Renovation 1/8/2010 Draft

ID	Task Name	Duration	Start	Finish	2010												2011											
					o	De	Jan	e	Mar	Apr	a	Jun	Jul	Au	e	Oct	o	De	Jan	e	Mar	Apr	a	Jun	Jul	Au	e	
1	<b>Sport Milestones</b>	<b>127.4 w</b>	<b>3/27/09</b>	<b>9/2/11</b>																								
2	2009 Beavers/Timbers	25.2 w	3/27/09	9/17/09																								
3	2009 PSU Vikings	13 w	9/4/09	12/2/09																								
4	2010 Timbers	23 w	4/8/10	9/15/10																								
5	2010 Beavers	23.6 w	4/8/10	9/20/10																								
6	2010 PSU Vikings (NOT @ PGE PARK)	13 w	9/10/10	12/9/10																								
7	Date of Substantial Completion / TCO - 2011	0 w	4/8/11	4/8/11																								
8	PSU Viking Football - 2011	0 w	9/2/11	9/2/11																								
9	<b>Design</b>	<b>64.8 w</b>	<b>4/15/09</b>	<b>7/9/10</b>																								
10	<b>PGE Park - Phase I Work (2009/2010)</b>	<b>22.6 w</b>	<b>7/16/09</b>	<b>12/18/09</b>																								
18	<b>Pile Testing Program</b>	<b>1.6 w</b>	<b>12/9/09</b>	<b>12/18/09</b>																								
23	<b>Phase IA GMP Assembly</b>	<b>6.4 w</b>	<b>12/4/09</b>	<b>1/18/10</b>																								
32	<b>Phase IB GMP Assembly</b>	<b>6.4 w</b>	<b>12/4/09</b>	<b>1/18/10</b>																								
40	<b>PGE Park - Phase II Work (2010/2011)</b>	<b>48.8 w</b>	<b>7/15/09</b>	<b>6/18/10</b>																								
56	<b>Phase II GMP Assembly</b>	<b>13.4 w</b>	<b>2/11/10</b>	<b>5/14/10</b>																								
62	<b>Phase III GMP Assembly</b>	<b>21.4 w</b>	<b>2/11/10</b>	<b>7/9/10</b>																								
68	<b>Special Studies</b>	<b>38.4 w</b>	<b>4/15/09</b>	<b>1/6/10</b>																								
81	<b>Agreements</b>	<b>24.2 w</b>	<b>3/16/09</b>	<b>9/1/09</b>																								
92	<b>City Design Review - Alt. Design Rev. process</b>	<b>36.6 w</b>	<b>8/27/09</b>	<b>5/7/10</b>																								
103	<b>Permitting Process - Major Projects Group</b>	<b>40 w</b>	<b>11/9/09</b>	<b>8/13/10</b>																								
110	<b>MLS Renovation at PGE Park</b>	<b>77.5 w</b>	<b>12/15/09</b>	<b>6/8/11</b>																								
111	<b>I. Phase I Work - 2009/2010 Offseason</b>	<b>24.2 w</b>	<b>12/15/09</b>	<b>6/1/10</b>																								
177	<b>II. Phase II Work - 2010/2011 Offseason</b>	<b>44.5 w</b>	<b>8/3/10</b>	<b>6/8/11</b>																								

**EXHIBIT 17.5**  
**Revenue Stream Guaranty**

**REVENUE STREAM GUARANTY**

THIS REVENUE STREAM GUARANTY (this "Guaranty") is made this \_\_\_ day of \_\_\_\_\_, 2010 by HENRY MERRITT PAULSON, JR., an individual, and HENRY MERRITT PAULSON, III, an individual, (each, a "Guarantor" and collectively, the "Guarantors"), to and for the benefit of the City of Portland, Oregon, a municipal corporation of the State of Oregon (the "City").

**RECITALS:**

WHEREAS, the City and Peregrine Sports, LLC ("Peregrine"), entered into that certain Redevelopment Agreement, dated as of the date hereof, pursuant to which Peregrine and the City will share the costs of renovating PGE Park (the "Stadium") to make it consistent with the requirements of Major League Soccer ("MLS");

WHEREAS, the City and Peregrine entered into that certain Operating Agreement, dated as of the date hereof, pursuant to which Peregrine will have the exclusive right and obligation to operate the Stadium for 25 years commencing on January 1, 2011 (the "Operations Term"), and, for each of the first seven years of the Operations Term, to make annual payments to the City (as shown on Exhibit A attached hereto, the "Annual Payments") and to pay into the City's Spectator Facilities Fund a ticket surcharge ("User Fee") of 7% of the applicable ticket price for events at the Stadium;

WHEREAS, Peregrine has further agreed pursuant to the Operating Agreement that, if in any of the first seven years of the Operations Term, the projected User Fee (as shown on Exhibit A as "Projected PGE Park User Fees", the "Projected User Fee") exceeds the User Fee actually collected for such year, then Peregrine shall pay to the City an amount (the "Guaranteed User Fee Amount") equal to the difference between the Projected User Fee and the User Fee actually collected;

WHEREAS, as an inducement to the City to enter into the Redevelopment Agreement and the Operating Agreement, the Guarantors have agreed to guarantee the performance of Peregrine's obligation to pay to the City the Annual Payments during the first seven operating years of the Stadium;

WHEREAS, as an inducement to the City to enter into the Redevelopment Agreement and the Operating Agreement, the Guarantors have agreed to guarantee the performance of Peregrine's obligation to pay the Guaranteed User Fee Amount to the City during the first seven operating years of the Stadium;

WHEREAS, this Guaranty plays an integral part in causing and promoting significant economic consequences in Oregon, namely the redevelopment of the Stadium; and

WHEREAS, it is in the best interests of the Guarantors to execute this Guaranty inasmuch as the Guarantors will derive substantial direct and indirect benefits from the Operating Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, and for the purpose of inducing the City to enter into the Redevelopment Agreement and the Operating Agreement, the Guarantors hereby covenant and agree as follows:

1. The Guarantors hereby unconditionally, irrevocably and absolutely guarantee to the City the full and prompt payment when due for each of the first seven years of the Operations Term of (a) Annual Payments and (b) any Guaranteed User Fee Amounts (collectively, the "Payment Obligations") which Peregrine is obligated to pay under, pursuant to or in connection with the Operating Agreement, until each and all of the Payment Obligations have been fully and finally paid and/or satisfied. The Guarantors' acknowledge and agree that Peregrine's obligation to promptly pay Annual Payments and Guaranteed User Fee Amounts to the City remains in full force and effect even if the Operating Agreement expires or is terminated prior to the end of the seventh year of the Operations Term for any reason other than a City Event of Default (as defined in the Operating Agreement) thereunder.

2. The Guarantors hereby waive: (a) notice of acceptance by the City of this Guaranty; (b) notice of any waiver, postponement, release or termination of the Payment Obligations; (c) notice of the reliance of the City upon this Guaranty; (d) notice of the occurrence, existence or continuance of any event of default, default, or failure of payment or performance under the Operating Agreement; (e) demand for payment, diligence, presentment, filing of claims with a court in the event of receivership or bankruptcy of Peregrine, protest or notice with respect to the Payment Obligations, and all demands whatsoever; and (f) any other notice, demand, protest or formality which would be otherwise legally required to charge the Guarantors with liability hereunder; and the Guarantors covenant and agree that this Guaranty will not be discharged, except by complete payment and performance of the Payment Obligations.

3. The Guarantors hereby assent, without the requirement or condition that notice of any kind or nature be given to the Guarantors on account thereof, to: (a) any waiver, postponement, release or termination of the Payment Obligations; (b) any lack of diligence in collection, any failure to resort to or exhaust other rights, powers or remedies, or any other waiver or failure of any type on the part of the City to enforce the Payment Obligations; (c) the acceptance by the City of (i) any prepayments or partial payments of the Payment Obligations and (ii) any payment in full satisfaction of less than all of the amount of the Payment Obligations; and (d) any other action or failure to act on the part of the City in respect to the enforcement or collection of the Payment Obligations.

4. This Guaranty and the liability of the Guarantors hereunder is and shall be an absolute, unconditional, irrevocable and immediate guaranty of payment when due and performance, and not a guarantee of collection, and shall remain in full force and effect at all times and in all respects and shall terminate only upon the full and complete performance of the Payment Obligations even if the Operating Agreement is temporarily suspended, expires or is terminated prior to the end of the seventh year of the Operations Term for any reason other than a City Event of Default thereunder. This Guaranty and the liability of the Guarantors hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Operating Agreement or (b) any law, ordinance, rule, regulation, writ, order

or decree now or hereafter in effect which might in any manner affect the Payment Obligations or any rights, powers or remedies of the City in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment of any of the Payment Obligations. Further, this Guaranty shall not be deemed discharged, impaired or affected by (v) any assignment by Peregrine of its interest in the Operating Agreement, (w) the existence or non-existence of Peregrine as a legal entity, (x) Peregrine's failure to complete the renovations to the Stadium as contemplated by the Redevelopment Agreement, (y) the failure of MLS, or (z) any material change or modification to the Redevelopment Agreement or Operating Agreement, including changes that materially increase the Guarantors' risk, regardless of whether the Guarantors are considered to be "compensated" or "uncompensated" Guarantors under Oregon law, provided the change or modification was agreed to by Peregrine or any of its successors-in-interest.

5. The covenants, agreements and obligations of the Guarantors under, and the rights, powers and remedies of the City for the enforcement of, this Guaranty shall not be affected, impaired, modified, changed, diminished, released, or limited in any manner whatsoever by reason of any impairment, modification, change, diminution, release or limitation of any and all of the obligations of, or of any right, power or remedy for the enforcement thereof against, Peregrine in bankruptcy, insolvency or reorganization resulting from the operation of any present or future provision of the Federal Bankruptcy Act, or of any state bankruptcy or insolvency statutes, or from the decision of any court, or otherwise.

6. The City shall have the right to pursue its rights, powers and remedies under this Guaranty at any time and from time to time against the Guarantors without being obligated or required first to resort to, and/or exercise and pursue, any rights, powers or remedies against Peregrine, to exhaust any such rights, powers or remedies available to the City against Peregrine, to resort to any security or collateral (if any) now or hereafter held by the City in respect of the Payment Obligations, to marshal the assets of Peregrine, or to seek any other rights, powers or remedies to enforce the payment or collection or the performance and observance of the Payment Obligations; and the City may pursue any and all such rights, powers and remedies at any time(s) or in any order as the City, in its sole discretion, may determine, and the exercise and pursuit of any of such rights, powers and remedies shall not constitute a legal or equitable discharge of the Guarantors. All of the rights, powers and remedies of the City under the Operating Agreement and this Guaranty are intended to be distinct, separate and cumulative, and none of such rights, powers and remedies therein and herein contained is intended to be exclusive of or a waiver of any other right, power or remedy therein or herein contained.

7. No forbearance or delay on the part of the City in exercising any of its rights, powers or remedies under this Guaranty, and no failure, neglect or refusal by the City to exercise the same, shall operate as a waiver of any such rights, powers or remedies; no notice to or demand on the Guarantors shall be deemed to be a waiver of any of the covenants, agreements or obligations of the Guarantors hereunder or of the right of the City to take any action without notice or demand, as provided herein. Except as expressly authorized herein, in no event shall any modification or waiver of the provisions of this Guaranty be effective unless such modification or waiver is in writing and signed by the parties to be charged therewith; and any such modification and waiver shall be a modification and waiver only with respect to the specific

matter involved and shall in no way impair the rights of the City in any other respect or at any other time.

8. The Guarantors hereby agree to pay all costs, expenses and charges, including, without limitation, court costs and reasonable attorneys' fees and expenses, which may be incurred or sustained by the City in connection with the enforcement of this Guaranty. The Guarantors also agree to the personal jurisdiction of the Oregon courts in the event any suit, action or proceeding is brought to enforce the terms of the Guaranty.

9. The Guarantors shall be jointly and severally obligated hereunder. This Guaranty is binding upon the respective estates and heirs of each Guarantor.

10. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Oregon without reference to its conflicts of law provisions. Each provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Guaranty or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portions of this Guaranty shall not be affected or impaired thereby, but each remaining clause, phrase, provision and portion shall be valid and be enforceable to the fullest extent permitted by law.

11. The Guarantors shall not be subrogated to any of the rights of the City, or its successors and assigns, under the Operating Agreement by reason of any of the provisions of this Guaranty or by reason of the performance by the Guarantors of any of the Guarantors' obligations, agreements and undertakings hereunder, unless and until all Payment Obligations have been satisfied. The Guarantors also waive any right to the discharge of their obligations by surrender or impairment of collateral held by the City, whether now or in the future, as security for Peregrine's obligations under the Operating Agreement, the Redevelopment Agreement or both.

12. The Guarantors agree that the City has not made promises or representations to the Guarantors to obtain the Guarantors' agreement to sign this Guaranty that are not reflected either in this Guaranty, the Redevelopment Agreement or the Operating Agreement. The Guarantors further agree that no failure on the part of the City to disclose facts that Guarantors might believe to be material will operate to discharge their obligations under this Guaranty. Similarly, any promises made by Peregrine to the Guarantors to induce the Guarantors to sign this Guaranty, whether or not subsequently found to be false, will not discharge the Guarantors from their obligations under this Guaranty.

13. All notices, requests, and other communications given under this Guaranty shall be in writing and shall with all postage and delivery charges prepaid by personal delivery, by messenger, by overnight courier service, or by certified or registered U.S. Mail, return receipt requested, addressed as follows:

If to the City:

City of Portland  
1221 S.W. Fourth Avenue, 1<sup>st</sup> Floor  
Portland, Oregon 97205  
Attn: City Auditor  
Fax No.: 503-823-4571  
Confirmation No.: 503-823-4078

with copies to:

Office of the City Attorney  
City of Portland, Oregon  
1221 S.W. Fourth Avenue, 4<sup>th</sup> Floor  
Portland, Oregon 97204  
Attn: City Attorney  
Fax No.: 503-823-3089  
Confirmation No.: 503-823-4047

and to:

Office of Management and Finance  
City of Portland, Oregon  
1120 S.W. Fifth Avenue, 12<sup>th</sup> Floor  
Portland, Oregon 97204  
Attn: CAO  
Fax No.: 503-823-5384  
Confirmation No.: 503-823-5288

and to:

Ball Janik LLP  
One Main Place  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204  
Attn: Steve Janik/Dina Alexander  
Fax No.: 503-295-1058  
Confirmation No.: 503-228-2525

If to Guarantors:

c/o Robbins & Associates  
333 W. Wacker Dr. Suite 830  
Chicago, Illinois 60606  
Attn: Henry Merritt Paulson, Jr. and/or Henry Merritt Paulson, III  
Fax No.: 312-609-1105  
Confirmation No.: 312-609-1100

with copies to:

Mayer Brown LLP  
71 S. Wacker Drive  
Chicago, IL 60606  
Attn.: Dan Luther, Esq.  
Fax No.: 312-701-7711  
Confirmation No.: 312-782-0600

or to such other address as the City or the Guarantors may have furnished to the others by written notice in the manner provided in this Section 12. Any such notice, request, consent, or other communication shall be deemed received on the earlier of actual delivery or refusal of a party to accept delivery thereof. Notices may be sent by counsel for a party to this Guaranty.

13. The Guarantors may not transfer, convey or assign this Guaranty, or any interest therein, without the prior written consent of the City.

[REST OF THIS PAGE LEFT INTENTIONALLY BLANK]



IN WITNESS WHEREOF, the Guarantors has executed and delivered this Guaranty as of the date first above written.

**GUARANTORS:**

HENRY MERRITT PAULSON, JR.

---

HENRY MERRITT PAULSON, III

---

Exhibit A

**Schedule of License Payments and  
Minimum City's Share of Ticket Revenues**

<b>Calendar Year</b>	<b>Operating Year</b>	<b>License Payment</b>	<b>Minimum City's Share of Ticket Revenues</b>	<b>Total</b>
2010				
2011	1	\$875,000	\$612,500	\$1,487,500
2012	2	900,000	626,500	1,526,500
2013	3	925,000	640,920	1,565,920
2014	4	950,000	655,772	1,605,772
2015	5	975,000	671,070	1,646,070
2016	6	1,000,000	686,828	1,686,828
2017	7	1,025,000	703,057	1,728,057

183516

**APPLICATION AND CERTIFICATE FOR PAYMENT**

AIA DOCUMENT G702

PAGE 1 OF 2 PAGES

TO PEREGRINE (THE "OWNER"):

PROJECT:

APPLICATION #:

PERIOD TO:

OWNER PO #:

Distribution to:

FROM CONTRACTOR:

**Turner Construction Company**  
1200 NW Naito Pkwy, Suite 300  
Portland, OR 97209

503-226-9825 Phone  
503-226-9836 Fax

ARCHITECT:

TURNER PROJECT #:

CONTRACT DATE:

\_\_\_\_Owner/Peregrine  
\_\_\_\_ARCHITECT  
\_\_\_\_CONTRACTOR

CONTRACT FOR:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for Payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	-
2. Net change by Change Orders	\$	-
3. CONTRACT SUM TO DATE (Line 1+2)	\$	-
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	-
5. RETAINAGE:		
a. <u>5</u> % of Completed Work		
b. <u>5</u> % of Stored Materials		
Total Retainage		
(Total in Column I on G703)	\$	-
6. TOTAL EARNED LESS RETAINAGE	\$	-
7. LESS PREVIOUS CERTIFICATES FOR PMT	\$	-
8. CURRENT PAYMENT DUE	\$	-
9. BALANCE TO FINISH, + RETAINAGE + TAX	\$	-

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that correct payment shown herein is now due.

CONTRACTOR: TURNER CONSTRUCTION COMPANY

By: \_\_\_\_\_ Date: 12/2/2009

State of: OREGON

County of:

Subscribed and sworn to before  
me this 2nd day of December 2009

Notary Public:

My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED**

\$ \_\_\_\_\_

*(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)*

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract:

Exhibit 18.2.1  
Form of Application  
for Payment

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month		
AIA CO #	\$0.00	\$0.00
	\$0.00	\$0.00
	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
NET CHANGES by Change Order		\$0.00

**Exhibit 18.2.2**  
**DOCUMENTS TO ACCOMPANY**  
**CONTRACTOR'S APPLICATIONS FOR PAYMENT**

**All Applications for Payment must be accompanied by:**

1. A statement of the percentage completion of each portion of the Project as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Project which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Project Improvements for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Project Improvements in the Schedule of Values. Applications for Payment shall also set forth the amount of money required to complete the Project Improvements (including all approved Change Orders) and such other information as Peregrine or the City may reasonably require. All Applications for Payment must contain a certification by the Contractor that the progress of the Project is in accordance with the Construction Documents, all applicable Laws and the Project Schedule, and that the Phase One Work and the Phase Two Work, to the best of the Contractor's knowledge at such time, will be completed on or before the date of Substantial Completion and finally completed on or before the date of Final Completion identified in the Project Schedule;
2. Updated Schedule of Values from the Contractor;
3. A duly executed and acknowledged Contractor's sworn statement showing all subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any subcontractor in the Application for Payment and the amount to be paid to each subcontractor from such progress payment, together with similar sworn statements from all subcontractors and, when requested, from Sub-subcontractors;
4. Duly executed waivers of mechanics', materialmen's and construction liens from the Contractor and all subcontractors with a contract value in excess of \$10,000 (each, a "Major Subcontractor"), establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment, which shall also include unconditional waivers and releases of all claims relating to the Project or the Project Site, including the right to claim against the payment bond for the Project, with respect to the payment requested by the Contractor in the Application for Payment. Peregrine, at its option, may provide unconditional waivers and releases with respect to the payment for work included in the immediately preceding Application for Payment and conditional waivers and

release with respect to the payment requested by the Contractor in the then-pending Application for Payment;

5. For material stored outside of the Project Site, if any, reasonably adequate evidence that: the stored materials are protected against theft or damage; upon payment of the cost of the stored material, the stored material will be owned by the City free of liens and claims; the aggregate cost of all stored materials for which payment is being requested does not exceed \$3,000,000; and the stored materials are adequately insured;
6. An "Insurance Certificate Log", with attached certificates of insurance from the Contractor and all subcontractors as required by these General Conditions;
7. An updated Project Schedule;
8. Copies of payment requests or billings from subcontractors for work performed during the period covered by and included in the Application for Payment;
9. A Change Order log showing all Change Orders;
10. An "Open Change Requests Log" which lists and identifies any and all claims asserted by each subcontractor against the Contractor which are open and pending; provided however, that such Open Change Requests Log shall not serve as notice of a Change Order Request as required by the Construction Contract; and
11. In each Application for Payment, the Contractor shall certify that the work for which payment is requested has been done, that the information contained in the Application for Payment is true and correct to the best of the Contractor's knowledge, and that all due and payable bills with respect to the Project Improvements have been paid or will be paid from the proceeds received from the Peregrine pursuant to such Application for Payment.

**The final Application for Payment shall be accompanied by all documents required above, plus the following documents:**

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. Final and full waivers of lien and claims from the Contractor and all Major Subcontractors;
3. A copy of all required certificates of occupancy for the Project;
4. Two duplicate sets of as-built Drawings and a CD containing the Drawings for submission to the City;

5. An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which the Peregrine or the City might be responsible or encumbered (less amounts withheld by Peregrine) have been paid or otherwise satisfied;
6. A certificate evidencing that insurance required by the Contract Documents 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 Peregrine and the City;
7. 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 Contract Documents;
8. Consent of surety, if any, to final payment,
9. 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;
10. Evidence that all claims of lien, if any, recorded against the Property have been discharged;
11. All manuals including equipment operation and maintenance manuals and written warranties required to be provided by the Contractor, subcontractors or sub-subcontractors, and
12. All other deliverables required under the General General Construction Contract.

**EXHIBIT 20.1****QUALIFICATIONS AND INDEMNIFICATIONS RELATING TO CITY'S  
REPRESENTATIONS AND WARRANTIES**

The City's representations and warranties contained in Section 20.1 are qualified as follows:

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

2. No representation or warranty is made regarding the effect on the enforceability of portions of the Redevelopment Agreement relating to the Exemption Ordinance, or that findings supporting the Exemption Ordinance are sufficient to comply with the Laws relating to exemption of contracts for public improvements from the requirements of competitive bidding. 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 PGE Park Operating Agreement based upon a challenge to the Exemption Ordinance or its findings brought by a person other than Peregrine.

3. (a) The validity and enforceability of the PGE Park 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 PGE Park 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 PGE Park 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 the Redevelopment 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 20.1 of the Redevelopment 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 the Redevelopment Agreement, the Redevelopment 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 the Redevelopment 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 20.1 of the Redevelopment Agreement is intended to constitute a representation or warranty that such agreements or modifications have been accomplished or can be.



**EXHIBIT 22.2.7**  
**Memorandum of Operating Agreement**

After Recording Return to:  
 Ball Janik LLP  
 101 SW Main Street, Suite 1100  
 Portland, OR 97204  
 Attn: Dina Alexander

**MEMORANDUM OF OPERATING AGREEMENT**

PARTIES: CITY OF PORTLAND, ("City")  
 a municipal corporation of the State of Oregon  
 1221 S.W. Fourth Avenue, 1st Floor  
 Portland, Oregon 97205  
 Attn: CAO

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

This Memorandum of Operating Agreement is executed, delivered, and recorded to give notice of the fact that the City and Peregrine have entered into that Operating Agreement dated \_\_\_\_\_, 2010, which affect the property described on the 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: \_\_\_\_\_  
 Sam Adams, Mayor

By: \_\_\_\_\_  
 City Auditor

Approved as to form:

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

Peregrine:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF MULTNOMAH        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by SAM ADAMS as Mayor 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as City Auditor 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 \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as City Attorney for the City of Portland, a municipal corporation of the State of Oregon, to approve the document as to form.

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

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as Manager of Peregrine Sports, a Delaware limited liability company, on behalf of the limited liability company.

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

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, Southeastery 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 Southeastery 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 Southeastery 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 \_\_\_\_\_, 2010, Fee No. 2010-\_\_\_\_\_, Multnomah County Deed Records.

Peregrine Sports, LLC  
**MLS Project Costs**  
 January through December 31, 2009

	<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Amount</u>
<b>Consultants</b>					
	08/31/2009	145-1-8-09	Icon Venue Group	Stadium project Fee July & Aug	\$ 63,042.00
	08/31/2009	145-1-8-09	Icon Venue Group	Reimbursable Expenses	11,723.71
	09/22/2009	1701.0001.00-1	Ellerbe Becket	Schematic Design	301,320.00
	09/22/2009	1701.0001.00-1	Ellerbe Becket	Reimbursable Expenses	10,563.87
	09/30/2009	145-2-9-09	Icon Venue Group	Project Fee	31,521.00
	09/30/2009	145-2-9-09	Icon Venue Group	Reimb expenses	6,481.16
	10/31/2009	145-3-10-09	Icon Venue Group	Project Fee	44,368.35
	11/25/2009	1701.0002.00-2	Ellerbe Becket	Schematic Design	15,100.00
	11/25/2009	1701.0001.00-2	Ellerbe Becket	Design Development	364,054.39
	11/30/2009	145-4-11-09	Icon Venue Group	Project Fee	39,999.74
	12/31/2009	1701.0001.00-3	Ellerbe Becket	Design Development	99,270.00
	12/31/2009	1701.0001.00-3	Ellerbe Becket	Reimb expenses	5,312.22
	12/31/2009	53282	Icon Venue Group	Project Fee	11,579.51
	12/31/2009	145-5-12-09	Icon Venue Group	Project Fee	31,521.00
	12/31/2009	145-5-12-09	Icon Venue Group	Reimbursable Expenses	8,389.83
Total Consultants					<u>1,044,246.78</u>
<b>Engineering Fees</b>					
	07/16/2009	482671-R8-00501	Shaw Environmental, Inc.		10,956.50
	08/06/2009	486338-R8-00501	Shaw Environmental, Inc.		5,482.38
	08/18/2009	487873-R8-00501	Shaw Environmental, Inc.		4,400.00
	09/15/2009	492512-R8-00501	Shaw Environmental, Inc.		115.43
	10/27/2009	496605-R8-00501	Shaw Environmental, Inc.		33,100.00
	11/25/2009	0053194	Kittleson & Associates		29,606.59
	12/31/2009	1209P09187	Mayes Testing Engineers, Inc		213.00
Total Engineering Fees					<u>83,873.90</u>
<b>Total Operating Expense</b>					
<b>Permits and Fees</b>					
	08/18/2009	PGE Park Ren #1	City of Portland	PGE Park Renovation Design Advise Request	1,700.00
	09/28/2009	MPG fee	City of Portland	Major Projects Group Initial Fee	10,000.00
	09/30/2009	2880112	City of Portland	courier service fees	52.64
	12/07/2009	2890814	City of Portland		90,000.00
	12/16/2009	2909816	City of Portland		3,412.00
	12/18/2009	3063318	City of Portland		28,282.00
	12/28/2009	3064045	City of Portland		3,459.67
	12/28/2009	3064623	City of Portland		1,750.00
	12/28/2009	3064570	City of Portland		102,318.90
Total Permits and Fees					<u>240,975.21</u>
<b>Total MLS Project Costs</b>					<u>\$ 1,369,095.89</u>