

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 1.4 Continuous Operations

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

21 1.5 Stadium Closure

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

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, 1st 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, 4th 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, 12th 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.

15

16 **Peregrine:**

PEREGRINE SPORTS, LLC

17

18

19

By: _____

20

Print Name: _____

21

Title: Manager

22 **Guarantors:**

HENRY MERRITT PAULSON, JR.

23

24

25

HENRY MERRITT PAULSON, III

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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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