



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 1.1.6 The City terminates the Redevelopment Agreement pursuant to Section  
11 26.2.3.3 thereof, Peregrine has not Substantially Completed the Project Improvements, and  
12 Peregrine does not continue to diligently pursue completion of the Project Improvements.

13 1.2 Guarantors' Obligations Under Completion Guaranty. This Guaranty is an  
14 absolute, irrevocable, present and continuing guaranty of payment and performance of the  
15 obligations set forth herein and not of collection, up to the Obligation Cap (as defined below).

16 1.2.1 Each Guarantor, jointly and severally, hereby absolutely, irrevocably, and  
17 unconditionally guarantees, as a principal obligor and not as a surety, to the City: (a) the  
18 Substantial Completion of the Project Improvements and the Final Completion of the Project  
19 Improvements, free and clear of all claims for mechanic's and materialmen's liens (except those  
20 arising out of valid claims against the City) and in accordance with: (i) all applicable Laws; (ii)  
21 the Drawings and Specifications; and (iii) the applicable provisions of the Redevelopment  
22 Agreement; (b) the payment of all amounts necessary to complete the Project Improvements and  
23 to pay all other obligations of the Guarantors under this Guaranty; (c) the payment of all  
24 Enforcement Costs (as hereinafter defined); and (d) the payment of all losses, costs, expenses,  
25 liabilities and damages incurred by the City arising from any failure of the Guarantors to  
26 complete the Project Improvements in accordance with the terms of this Guaranty by the  
27 Completion Date. "Enforcement Costs" means any and all reasonable attorneys' fees, costs and  
28 expenses, including without limitation, court costs, filing fees, and all other costs and expenses  
29 reasonably incurred in connection with enforcement of this Guaranty.

30 1.2.2 The obligations described in Section 1.2.1 above are the "Guaranteed  
31 Obligations" of the Guarantors. The Guarantors' liability with respect to the Guaranteed  
32 Obligations and any and all other obligations under this Guaranty shall not under any  
33 circumstances exceed in the aggregate, with respect to both Guarantors, the maximum amount of  
34 \$20,000,000 (the "Obligation Cap").

35 1.2.3 If the Guarantors fail to commence and pursue diligently the performance  
36 of the Guaranteed Obligations within thirty (30) days after receipt of written notice from the City  
37 demanding the performance of either or both Guarantors, then, either before or after pursuing any  
38 other remedy against the Guarantors or Peregrine, the City shall have the right, but not the  
39 obligation, to complete the Project Improvements or call upon any other reputable parties to  
40 complete the Project Improvements (including the right to assume from Peregrine the General  
41 Construction Contract or replace the Contractor in accordance with the terms thereof), with such

1 changes or modifications to the Drawings and Specifications or the Project Budget as the City  
2 deems necessary in the City's reasonable discretion, and the City shall have the right to expend  
3 such sums as the City in its sole and exclusive discretion deems proper in order to complete the  
4 Project Improvements and to receive reimbursement from the Guarantors up to the Obligation  
5 Cap. During the course of any construction undertaken by the City or by any other party on  
6 behalf of the City, the Guarantors shall pay on demand, up to the Obligation Cap, any and all  
7 amounts due to contractors, subcontractors and material suppliers and for permits, licenses,  
8 entitlements, bonds, taxes, assessments and other items necessary or desirable in connection  
9 therewith.

10 1.2.4 If the City has sent the Guarantors written notice requiring either or both  
11 Guarantors to perform the Guaranteed Obligations, the City shall make available to the  
12 Guarantors the balance of the undisbursed Public Contribution pursuant to and in accordance  
13 with the Redevelopment Agreement solely for the purposes of completing the Project  
14 Improvements and fulfilling their other obligations under this Guaranty, so long as: (a) no  
15 default exists under this Guaranty; (b) the Guarantors have expressly reaffirmed all obligations  
16 assumed by them under this Guaranty and perform all obligations under this Guaranty up to the  
17 time of completion of the Project Improvements; and (c) all other conditions of the  
18 Redevelopment Agreement to the disbursement of such proceeds are satisfied.

19 1.3 Term of Guarantors' Obligations. Once the Guarantors have been obligated to  
20 commence performance under the Guaranty pursuant to Section 1.1, the Guarantors' obligation  
21 to perform and this Guaranty shall terminate upon the earliest of (i) Final Completion of the  
22 Project and (ii) payment by the Guarantors in an amount equal to the Obligation Cap. If the  
23 Guarantors have not been obligated to commence performance under this Guaranty pursuant to  
24 Section 1.1 and Peregrine has Substantially Completed the Project Improvements, then the  
25 Guarantors' obligations under the Guaranty shall cease and the City shall promptly upon written  
26 request execute a written release of the Guarantors' obligations under this Guaranty.

## 27 2. LIMITATION OF LIABILITY

28 Notwithstanding anything to the contrary in this Guaranty:

29 2.1 Performance Limitation. The Guarantors' obligations under the Guaranty are  
30 solely the Guaranteed Obligations, and the Guarantors shall have no obligation to perform any of  
31 Peregrine's other obligations under the Redevelopment Agreement or any of the Related  
32 Agreements.

33 2.2 City's Obligation To Perform. The Guarantors' obligations under this Guaranty to  
34 the City are subject to there not being a City Event of Default under the Redevelopment  
35 Agreement or any of the Related Agreements of (a) any of its monetary obligations relating to the  
36 funding of the Public Contribution and City Costs, when and as they become due, which will  
37 materially and adversely affect the Guarantors in the fulfillment of their obligation under this  
38 Guaranty, or (b) any of the City's non-monetary obligations which will materially and adversely  
39 affect the ability of the Guarantors to fulfill their obligations under this Guaranty.

40 2.3 Other Defenses. The Guarantors shall be entitled to maintain all defenses to  
41 performance of this Guaranty which Peregrine is entitled to assert as to its obligations, except for

1 any defense: (a) arising by reason of Peregrine being the debtor in a case arising under the  
2 United States Bankruptcy Code (the "Code"); (b) arising by reason of Peregrine's lack of  
3 capacity or authority to enter into the Redevelopment Agreement or perform its obligations  
4 thereunder; or (c) already raised by Peregrine and adjudicated, mediated or arbitrated as provided  
5 in the Redevelopment Agreement.

### 6 3. ADDITIONAL GUARANTY PROVISIONS

7 3.1 Waivers by the Guarantors. Each Guarantor unconditionally and irrevocably, to  
8 the extent legally permitted:

9 3.1.1 Waives any requirement that the City, in the event of default by Peregrine,  
10 first make any demand, or seek to enforce remedies against Peregrine before seeking to enforce  
11 this Guaranty.

12 3.1.2 Waives any defense other than (a) those defenses that each is permitted to  
13 maintain pursuant to Section 2.3 above, (b) the defense that Final Completion of the Project  
14 Improvements has occurred, and (c) the defense that the Guarantors have already made payments  
15 up to the amount of the Obligation Cap.

16 3.1.3 Waives any claim based on any alleged impairment of any collateral or any  
17 alleged unjustified impairment of recourse against Peregrine or any other person or entity liable  
18 on any obligations guaranteed hereby (whether such impairment is alleged to be intentional,  
19 reckless, negligent or otherwise).

20 3.1.4 Waives any claim or circumstance which constitutes a legal or equitable  
21 discharge of a guarantor or surety.

### 22 3.2 Representations by the Guarantors.

23 3.2.1 The death of a Guarantor shall not revoke this Guaranty as to such  
24 Guarantor unless and until written notice thereof is actually received by the City and until all  
25 obligations of such Guarantor under this Guaranty have been performed by such Guarantor's  
26 estate or heirs.

27 3.2.2 Each Guarantor: (a) is now and at all times during the term hereof shall be  
28 generally paying his debts as they mature; (b) now owns, and at all times during the term hereof  
29 shall own, property which, at a fair valuation, is greater than the sum of his debts; and (c) now  
30 has and at all times during the term hereof shall have capital sufficient to carry on his business  
31 and personal affairs.

32 3.2.3 This Guaranty has been duly and validly executed and delivered by each  
33 Guarantor and constitutes the legal, valid and binding obligations of the Guarantors, jointly and  
34 severally, enforceable against the Guarantors in accordance with its terms.

35 3.3 Modifications. In addition to but not in limitation of the foregoing, the City may,  
36 at any time and from time to time, without the consent of, or notice or responsibility to the  
37 Guarantors, and without impairing or releasing the obligations of the Guarantors (with  
38 Peregrine's consent where otherwise required): (a) modify or amend the manner, place or terms

1 of payment or performance, or change or extend the time of payment or performance, or modify  
2 any of the obligations of Peregrine under the Redevelopment Agreement (and, if so required  
3 under the Redevelopment Agreement, with Peregrine's consent) and this Guaranty shall apply to  
4 such obligations of Peregrine, as so modified, amended, or extended in any manner (subject to  
5 the Obligation Cap); (b) exercise or refrain from exercising, in any manner and in any order, any  
6 remedy it may have with respect to any obligations of Peregrine; (c) exercise or refrain from  
7 exercising any rights against Peregrine or others, including the Guarantors, or otherwise in any  
8 way act or refrain from acting; and (d) settle or compromise any obligations or liabilities of  
9 Peregrine.

10 3.4 No Implied Waiver. No delay on the part of the City in exercising any of its rights  
11 under the Redevelopment Agreement or this Guaranty or otherwise, and no partial or single  
12 exercise of such rights, and no action or failure to act by the City, with or without notice to the  
13 Guarantors or anyone else, shall constitute a waiver of such right, or shall effect or impair this  
14 Guaranty.

15 3.5 Primary Guaranty. This Guaranty is, and remains until fully satisfied, a primary  
16 obligation of the Guarantors.

17 3.6 Information Regarding Peregrine. The City is not required to disclose to the  
18 Guarantors any information with respect to the financial condition or character of Peregrine, any  
19 collateral, other guarantees, or any action or non-action on the part of the City or Peregrine or any  
20 person connected with the credit or collateral thereto. Each Guarantor represents that he is fully  
21 aware of the financial condition of Peregrine and is in such a position by virtue of its relationship  
22 to Peregrine to obtain all necessary financial information concerning Peregrine's business. Each  
23 Guarantor shall assume the responsibility for keeping himself informed of the status of  
24 Peregrine's performance of Peregrine's obligations under the Redevelopment Agreement, and the  
25 City shall have no duty to advise either Guarantor of any information now or hereafter known  
26 regarding Peregrine, the Project or the Project Improvements.

27 3.7 Direct Enforcement. The City shall not be required to first resort to performance  
28 from Peregrine, other guarantors, if any, or other persons or corporations, their properties or  
29 estates, or to any collateral security, property, liens, mortgages, or other rights or remedies  
30 whatsoever, prior to requiring the Guarantors to fully satisfy the Guaranteed Obligations.

31 3.8 Peregrine Indebtedness. Any indebtedness of Peregrine now or hereafter owed to  
32 the Guarantors is hereby subordinated to Peregrine's obligations under the Redevelopment  
33 Agreement (to the extent guaranteed by the Guarantors), and, such indebtedness of Peregrine to  
34 the Guarantors, if the City so requests, shall be collected, enforced, and received by the  
35 Guarantors as trustee for the City and be paid over to the City on account of obligations of  
36 Peregrine to the City under the Redevelopment Agreement but without reducing or affecting in  
37 any manner the liability of the Guarantors herein; *provided, however*, that so long as Peregrine is  
38 not in default under the Redevelopment Agreement, Peregrine shall be entitled to pay any  
39 indebtedness to the Guarantors and the Guarantors shall be entitled to receive and retain such  
40 payment solely for the Guarantors' own account.

1           3.9    Waiver of Subrogation by Guarantors.

2                   3.9.1 Waiver. Each Guarantor waives any claim or other right now existing or  
3 hereafter acquired against Peregrine, or any other person who is primarily or contingently liable  
4 on the obligations of Peregrine under the Redevelopment Agreement, that arises from the  
5 Guarantors' performance of their obligations under this Guaranty, including, without limitation,  
6 any right of contribution, indemnity, subrogation, reimbursement, exoneration, and the right to  
7 participate in any claim or remedy of the City against Peregrine or any collateral security  
8 therefore which the City now has or hereafter acquires, whether or not such claim, right or  
9 remedy arises under contract, law or equity.

10                   3.9.2 Reinstatement. The obligations of the Guarantors shall be automatically  
11 reinstated if and to the extent that for any reason any payment by or on behalf of Peregrine is  
12 rescinded or must be otherwise restored by any holder of any such obligation, whether as a result  
13 of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that  
14 it will indemnify the City on demand for all reasonable payments, costs and expenses, including  
15 legal fees, incurred by the City in connection with such rescission or restoration. If payment is  
16 made by Peregrine on an obligation guaranteed hereby and thereafter the City is forced to remit  
17 the amount of that payment to Peregrine's trustee in bankruptcy or a similar person under any  
18 federal or state bankruptcy law or law for the relief of debtors, Peregrine's obligation shall be  
19 considered unsatisfied for the purpose of enforcement of this Guaranty.

20                   3.10 Claims in Bankruptcy. Each Guarantor hereby expressly and irrevocably releases  
21 and waives any and all "claims" (as now or hereafter defined in the Code) of any nature  
22 whatsoever, whether known or unknown and whether now existing or hereafter acquired, against  
23 Peregrine or the estate of Peregrine in any existing or future bankruptcy case in which the debtors  
24 include Peregrine or any other person or entity with respect to which such Guarantor is an  
25 "insider" (as defined in the Code), to the extent such claims in any manner are related to or arise  
26 out of this Guaranty or any obligations guaranteed hereby (including but not limited to fixed or  
27 contingent claims based on subrogation, indemnity, reimbursement, contribution, or contract).

28                   3.11 Exercise of Remedies by the City. Each Guarantor consents to the City at any  
29 time exercising, in its sole discretion, any right or remedy or any combination thereof which may  
30 then be available to the City against Peregrine under the Redevelopment Agreement. The  
31 exercise of any such rights or remedies shall not constitute a legal or equitable discharge of either  
32 or both Guarantors. It is each Guarantor's intent and purpose that, except as otherwise provided  
33 in this Section 3, the obligations of such Guarantor shall be absolute, independent, and  
34 unconditional under any and all circumstances.

35                   3.12 Impact of Peregrine Bankruptcy. The liability of the Guarantors pursuant to this  
36 Guaranty shall not be affected in any way by the institution of any proceedings involving  
37 Peregrine under the Code or by any action taken in any such proceedings.

38   4.    REMEDIES

39           Upon a breach of this Guaranty by the Guarantors, the City shall be entitled to pursue all  
40 legal remedies against the Guarantors; provided, however, that the City shall be limited to  
41 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.



