

**DEVELOPMENT AGREEMENT
DELTA PARK**

This DEVELOPMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2013 (the "Effective Date"), by and between Peregrine Sports, LLC, an Oregon limited liability company ("Peregrine") and the City of Portland, a municipal corporation duly organized and existing under the laws of the State of Oregon acting by and through its Bureau of Parks & Recreation ("PP&R" or the "City"). Peregrine and PP&R may be referred to herein jointly as the "Parties" or individually as a "Party".

RECITALS

- A. PP&R owns and has responsibility for the operation and maintenance of Delta Park shown on the attached Exhibit A (the "Park") which includes seven softball fields, one all-weather synthetic sports field and eight grass sports fields;
- B. PP&R's 2020 Vision Plan (the "Vision") for the Park contemplates converting the existing grass sports fields to all-weather synthetic sports fields and the addition of field lights;
- C. The City recognizes the significance of the Park as a regional sports facility, contributing to the vitality of the community and economy. Over the years, the Park has experienced increasing demand for its use by sport field users;
- D. As a result, PP&R, consistent with the Vision, plans to solicit competitive bids for the conversion of four of the grass sport fields to all-weather synthetic sport fields with lights (collectively, the "Fields Project");
- E. Complimentary to Fields Project, Peregrine has committed to permit, design and construct a sports field support building at the Park that includes a field support space, bathrooms and locker rooms (collectively, the "Building Project"). The Building Project is more specifically described in the Scope of Development (as hereinafter defined);
- F. The Building Project, together with the Fields Project shall be referred to herein as the "Delta Park Project";
- G. In connection with this Agreement, PP&R is seeking Portland City Council ("Council") authorization to expend \$2,100,000 in System Development Charge ("SDC") funds for the Fields Project and \$125,000 in SDC funds for PP&R permitting, design and construction staff for both the Delta Park Project (the "PP&R Funding");
- H. Aside from the incidental SDC funds for PP&R permitting, design and construction staff for the Building Project, the PP&R Funding will be used exclusively for the competitively bid Fields Project;

- I. Peregrine's development and construction of the Building Project shall be adjacent to Field 9, a portion of the Park as more particularly described on Exhibit B attached hereto (the "Building Site");
- J. The completion of the Building Project according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance (as hereinafter defined), is a material inducement to PP&R to enter into this Agreement; and
- K. The purpose of this Agreement is to memorialize the Parties' understanding of their respective roles and commitments in the development of the Delta Park Project.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. GENERAL TERMS OF DEVELOPMENT

- 1.1. **Master Developer.** On and subject to the terms and conditions of this Agreement, the City hereby grants to Peregrine the right to develop and to contract for the construction of the Building Project on the Project Site. Except as expressly provided otherwise in this Agreement, Peregrine shall take all actions, retain all persons and firms and employ all means to cause the design, permitting and construction of the Building Project, in the manner and within the times contemplated by this Agreement. In so doing, Peregrine shall act in its own name as an independent contractor and not on behalf of or as an agent, joint venturer, or partner of the City.
 - 1.1.1. **Notice of Contract Requirements.** Peregrine shall comply with or shall cause its contractor(s) to comply with the contract requirements set forth on Exhibit C (the "Contract Requirements"). Peregrine shall comply with the Contract Requirements by including such provisions in its contract(s) ("Construction Contracts") with its contractor(s) (each, a "Contractor"). Further, all Construction Contracts shall require a Contractor to include the Contract Requirements in any subcontract. Peregrine shall hold harmless, defend, and indemnify the City and its respective officers, agents and employees against all claims, demands, actions, and suits (including attorney fees and costs) brought against any of them arising from Peregrine's failure to include the Contract Requirements in its Construction Contracts.
 - 1.1.2. **Indemnification by Contractor.** For all Construction Contracts, Peregrine shall include a provision requiring its Contractor, and any subcontractors thereto, to hold harmless, defend, and indemnify the City and its respective officers, agents and employees against all claims, demands, actions, and suits (including attorney fees and costs) brought against any of them arising from the Contractors' or subcontractors' work in connection with the Building Project.
- 1.2. **Allocation of Costs.**
 - 1.2.1. **Peregrine Funding.** Peregrine shall pay the following towards the Delta Park Project:

- (i) **Building Project.** Peregrine shall be responsible for obtaining all funds and financing necessary to design and construct the Building Project, including any and all cost overruns; and
- (ii) **Fields Project.** Peregrine shall pay the sum of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000) to PP&R in immediately available funds (the "Fields Payment") on the earlier of: (i) prior to the Notice to Proceed Deadline; or (ii) within thirty (30) days of PP&R's request therefor.

1.2.2. PP&R Funding. With the exception of the incidental SDC funds for PP&R permitting, design and construction staff for the Building Project, PP&R shall use the PP&R Funding for the Fields Project, the scope and design of which shall be at PP&R's sole discretion; provided, however, in consideration of the Fields Payment by Peregrine, PP&R shall prioritize Field 9 when it undertakes the Fields Project.

- 1.3. Oregon Prevailing Wage Law.** Because the Building Project is a "public work" within the meaning of ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the "Oregon Prevailing Wage Law"), the Building Project shall be subject to the requirements of the Oregon Prevailing Wage Law. As such, Peregrine shall execute a Compliance Agreement substantially in the form attached hereto as Exhibit D (the "Compliance Agreement").
- 1.4. Access and Inspection.** PP&R agrees that Peregrine and its authorized agents or representatives shall be entitled to enter upon the Park to make such investigations, studies and tests as Peregrine deems necessary or advisable in connection with constructing the Building Project, as set forth in the Permit of Entry substantially in the form attached hereto as Exhibit E (the "Permit of Entry").
- 1.5. Real Property Taxes.** Peregrine shall pay any and all real estate taxes and assessments, if any, that are assessed on the Park or any portion thereof, as a result of the Building Project and shall discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all business and occupation taxes, assessments and all other governmental impositions and charges of every kind and nature whatsoever.

2. REPRESENTATIONS AND WARRANTIES

- 2.1. PP&R Representations and Warranties.** PP&R's representations and warranties under this Agreement are limited to the following. As used herein, "PP&R's knowledge" means the actual current knowledge of the PP&R Project Manager, without any duty of inquiry or investigation. PP&R hereby warrants and represents to Peregrine as of the Effective Date and as of the Notice to Proceed Deadline the following:
 - 2.1.1.** The City is a municipal corporation duly organized and validly existing under the laws of the State of Oregon, and has full requisite municipal power and authority to execute, enter into and deliver this Agreement, and to perform its obligations under this Agreement, subject to any disclaimers or qualifications set forth in this Agreement.

- 2.1.2. The execution, delivery and performance of this Agreement by the City and the consummation of the transactions contemplated in this Agreement have been duly authorized by all necessary municipal action on the part of the City. No further consent, approval or other authorization of or by any court, administrative agency or other governmental authority is required in connection with the execution, delivery and performance of this Agreement by the City and the consummation of the transactions contemplated in this Agreement.
 - 2.1.3. This Agreement is, when duly executed and delivered by the City and by Peregrine, the legal, valid and binding obligation of the City, fully enforceable in accordance with its respective terms, subject to any disclaimers or qualifications in this Agreement. The validity and enforceability of this Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally, and by equitable principles governing specific performance, injunctive relief, and other applicable remedies.
 - 2.1.4. To PP&R's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Project Site, or PP&R's ability to perform its obligations under this Agreement.
 - 2.1.5. To PP&R's knowledge, PP&R has not received any notice stating that the Park is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.
- 2.2. **Peregrine's Representations and Warranties.** Peregrine's representations and warranties under this Agreement are limited to the following. Peregrine hereby warrants and represents to PP&R as of the Effective Date and as of the Notice to Proceed Deadline the following:
 - 2.2.1. Peregrine is a limited liability company duly formed and existing in the State of Oregon.
 - 2.2.2. Peregrine has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Peregrine in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
 - 2.2.3. This Agreement and all documents required to be executed by Peregrine are and shall be valid, legally binding obligations of and enforceable against Peregrine in accordance with their terms.
 - 2.2.4. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or

constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Peregrine is a party.

- 2.2.5. No representation, warranty or statement of Peregrine in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- 2.2.6. Peregrine enters into this Agreement without reliance on verbal representations by PP&R, its employees, agents or consultants, regarding any aspect of the Park, the Delta Park Project, or the Building Project, including its feasibility or compliance with any governmental regulation.
- 2.2.7. As of the Effective Date, Peregrine is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Peregrine under this Agreement.
- 2.2.8. The persons executing this Agreement and the instruments referred to herein on behalf of Peregrine have the legal power, right and actual authority to bind Peregrine to the terms and conditions of this Agreement.

3. CONDITIONS PRECEDENT TO THE NOTICE TO PROCEED

- 3.1. **Conditions.** Peregrine and PP&R are not obligated to proceed with the transactions contemplated hereunder unless the following conditions are satisfied prior to the date set forth in the Schedule of Performance for PP&R's issuance of the Notice to Proceed for construction of the Building Project (the "Notice to Proceed Deadline"). The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.
 - 3.1.1. To the reasonable satisfaction of both PP&R and Peregrine, which conditions must be waived in writing by both PP&R and Peregrine if not satisfied:
 - (i) Both the Design Development Drawings and Final Construction Plans and Specifications have been approved by all required governmental entities and/or agencies, including PP&R's design review pursuant to Section 7.2 below.
 - (ii) All land use approvals and permits for the Building Project required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal was filed, it shall have been finally resolved.
 - (iii) The Parties shall have entered into a License Agreement setting forth, among other things, the terms and conditions of usage, operation and maintenance of the completed Building Project.
 - (iv) The Building Project has been exempted from the requirements of ORS 279C.300 et seq. by Council and if an appeal was filed, it shall have been finally resolved.

- (v) Council shall have awarded this Agreement as a sole source procurement under ORS 279B.075 and if an appeal was filed, it shall have been finally resolved.
- (vi) No litigation is pending that prevents PP&R or Peregrine from performing their respective obligations under this Agreement.

3.1.2. To Peregrine’s reasonable satisfaction, which conditions may be waived in writing solely by Peregrine if not satisfied:

- (i) PP&R is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of PP&R under this Agreement.
- (ii) No material adverse change in the physical or legal condition of the Project Site has occurred.

3.1.3. To PP&R’s reasonable satisfaction, which conditions may be waived in writing solely by PP&R if not satisfied:

- (i) PP&R has received documentation indicating that the City of Portland Bureau of Development Services is ready to issue the building permits that are required to construct the Building Project.
- (ii) Peregrine has provided to PP&R documentation that:
 - a. Peregrine is a legal entity qualified to do business in the state of Oregon;
 - b. Peregrine has full power and authority to enter into and perform its obligations under this Agreement; and
 - c. This Agreement has been executed and delivered, for and on behalf of Peregrine, by an authorized individual.
- (iii) Peregrine has demonstrated financial feasibility for the Building Project to PP&R’s satisfaction.
- (iv) Peregrine shall have paid the Fields Payment to PP&R.
- (v) Peregrine is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Peregrine under this Agreement.
- (vi) The Parties shall have entered into the Compliance Agreement.
- (vii) Peregrine has registered the Building Project for LEED certification and has provided PP&R with documentation of the Building Project’s LEED credits, evidencing anticipated credits sufficient to reach at least a LEED certification level consistent with the City’s Green Building Policy.

3.2. Elections upon Non-Satisfaction of Conditions. If any condition in this Section 3 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Notice to Proceed Deadline (or such later date, if any, designated pursuant to Section (vii)(c) below or determined in accordance with Section 3.3), then such benefited Party or Parties may elect as follows:

- (a) Terminate this Agreement by and effective upon written notice to the other Party; or
- (b) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for the Notice to Proceed Deadline, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

3.3. Final Termination Date. If all of the conditions precedent to the Notice to Proceed Deadline set forth in Section 3 have not been satisfied or waived by the later of: (a) the Notice to Proceed Deadline; (b) such later date, if any, designated pursuant to Section 3.2(c) or determined in accordance with Section _____, then this Agreement shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and The Notice to Proceed Deadline shall have occurred within such 60-day period.

3.4. Effect of Termination for Non-Satisfaction of Conditions Precedent. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing and executing such documents as may be necessary or desirable to reflect the termination of this Agreement. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

4. INFRASTRUCTURE, UTILITIES AND PROJECT SITE CONDITIONS

4.1. Infrastructure Improvements. As part of the Building Project, Peregrine, at its own cost, will design, construct, fund and obtain permits for all Infrastructure. As used herein, "Infrastructure" means public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Building Project to abutting potable water and sewer and storm sewer mains, connecting the Building Project to gas and electric and other necessary utility services, and all permitting for any of the above as further described in the Scope of Development set forth in Exhibit F attached hereto and incorporated herein by this reference.

4.2. Site Preparation. As part of the Building Project, Peregrine will, at its own cost, complete all necessary site preparation on the Project Site generally in accordance with the Schedule of Performance.

- 4.3. **Utility Service.** As part of the Building Project, Peregrine shall install, connect, and upgrade new and existing utilities necessary to serve the Building Project.
- 4.4. **Subsurface and Surface Conditions.** PP&R makes no warranties or representations that the soil conditions, Environmental Conditions or any other conditions of the Project Site are suitable for any improvements, including the Building Project. Peregrine acknowledges that it has not relied on any verbal representations made by PP&R as to the soil conditions, Environmental Conditions or any other conditions of the Project Site or Park. Peregrine acknowledges that it has had free access to PP&R's records with respect to the condition of the Project Site and the Park.

5. DEVELOPMENT

5.1. **Plans, Drawings and PP&R Design Review and Approval.**

5.1.1. **Design Objectives, Review and Approval.** Peregrine shall prepare Design Development Drawings and Construction Drawings and Technical Specifications for the Building Project and submit them to PP&R for review and approval as discussed below and in accordance with the Schedule of Performance. All plans and specifications referred to in this Section 5.1 are referred to herein as the "Drawings." Peregrine will contract with architects, engineers and other consultants necessary to prepare the Drawings required for building and land use permits and to construct the Building Project. The Drawings will be reviewed and approved by PP&R as described below prior to Peregrine's submitting an application for a building permit. Peregrine will be responsible for all required land use and building permit review and permit fees paid to the applicable permitting agencies. PP&R will be responsible for any Special Inspections performed by an independent inspection/testing agency. Peregrine shall be responsible for geotech testing. Quality Control Testing and Inspections during construction as required by PP&R, and as set forth in the project specifications attached hereto as Exhibit G ("PP&R's Specifications"), will be contracted by PP&R. Notwithstanding City approval of the Drawings, responsibility for the adequacy of the Drawings shall remain with Peregrine. The Drawings shall be completed in accordance with PP&R's CAD drawings standards set forth in PP&R's Specifications.

5.1.2. **Definitions.** For purposes of this Agreement:

- (i) "Design Development Drawings" means the detailed plans submitted for City Design Review, including but not limited to:
- Architectural site plans showing all structures upon the Project Site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
 - A general landscaping concept plan;
 - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
 - A calculation of gross building areas, floor areas, height ratios and open spaces; and

- A preliminary Exterior Finish Schedule.
- (ii) “Construction Drawings and Technical Specifications” means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Building Project pursuant to the terms of this Agreement, approved by the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Building Project.

5.1.3. Limitations on Review of Design. PP&R’s review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

- (a) **Preliminary Design Development Drawings (50% DD).** Elements, including Green Building elements, draft Design Review Application and Narrative, draft Development Drawings (50%) material and color samples, and draft Design Development Drawings (50%) cost estimate, depicted in the draft Design Development Drawings (50%) at a level of detail to be approved;
- (b) **Final Design Development Drawings (100% DD).** Elements, including Green Building elements, Final Design Review Application and Narrative, final Design Development Drawings material and color samples, and final Design Development Drawings cost estimate, depicted in the final Design Development Drawings that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Design Development Drawings (50%);
- (c) **Preliminary Construction Drawings and Technical Specifications (50% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (50%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Design Drawings;
- (d) **Preliminary Construction Drawings and Technical Specifications (90% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (90%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (90%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Construction Drawings and Technical Specifications (50%);
- (e) **Final Construction Drawings and Technical Specifications (100% CD).** Elements, including Green Building elements, final Construction Drawings and Technical Specifications cost estimate, and material and color samples, depicted in the final Construction Drawings and Technical Specifications that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft

Construction Drawings and Technical Specifications (90%).

- 5.1.4. Changes in Approved Drawings.** Peregrine shall submit to PP&R for review any substantial changes to any previously approved Drawings. A substantial change shall mean any change that would have a material impact on the function, appearance or operation of the Building Project. Peregrine acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PP&R has approved the changes. PP&R shall assist Peregrine throughout any City design review process of the appropriate bureaus or agencies within the City, but PP&R does not represent or warrant that its assistance will guarantee approval.
- 5.1.5. PP&R Staff Review of Design.** PP&R and Peregrine acknowledge that the Schedule of Performance for the Project requires expeditious review and response from PP&R and responsiveness and cooperation from Peregrine and its Design Team in connection with the design review process. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. PP&R staff shall be notified in advance and may attend regularly scheduled design meetings for the Project. The PP&R Project Manager will meet with Peregrine and its Design Team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues. The scope of PP&R's review will be consistent with Sections 7.2 of this Agreement. If PP&R does not provide its approval or rejection of any Drawings by the due date for such Drawings set forth in the Schedule of Performance, then such Drawings shall be deemed approved by PP&R.
- 5.2. Diligent Completion.** Subject to the terms and conditions of this Agreement (including any Unavoidable Delay as defined in Section ____), Peregrine covenants to complete the development of the Building Project in substantial conformance with the final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance attached hereto as Exhibit H (the "Schedule of Performance"). Subject to delays permitted in accordance with the terms of this Agreement, Peregrine shall complete development of the Building Project no later than the date for completion of construction set forth in the Schedule of Performance. Peregrine agrees to keep PP&R informed of its progress with respect to development of the Building Project during construction, with periodic reports to be issued no less frequently than once a month until Peregrine receives its Certificate of Occupancy.
- 5.3. Safety Matters and Indemnification.** Peregrine shall:
- 5.3.1. Safety.** Comply with all safety laws and take all reasonable safety measures necessary to protect its employees and PP&R's employees, agents, contractors, subcontractors, licensees and invitees, their personal Park, and improvements of each, from injury or damage caused by or resulting from the performance of its construction.
- 5.3.2. Indemnity from Liability Claims.** Indemnify, defend (at PP&R's request) and hold harmless PP&R, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the Park of any person during the process of the construction work or the

performance of Peregrine's other obligations under this Agreement, except to the extent: (a) caused solely by PP&R or its employees, agents, contractors, subcontractors, licensees or invitees; or (b) caused by the gross negligence or willful misconduct of PP&R or its employees, agents, contractors, subcontractors, licensees or invitees. The indemnity set forth in this Section 5.3.2 shall survive any termination of this Agreement.

5.4. Compliance with Laws and Use Restrictions. Peregrine will comply with, or cause its contractor(s) to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Peregrine, the Building Project, or the operation thereof, including, without limitation:

- (i) All applicable health and safety, environmental, and zoning laws;
- (ii) All applicable federal, state and local laws and regulations. Peregrine shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, including, without limitation, the Americans With Disabilities Act of 1990 (Pub. L. No.1 01-336), including Title II of that Act, with ORS 659.425, and with all regulations and administrative rules established pursuant to those laws. Peregrine shall present and obtain approval of the Building Project through PP&R's Disability Advisory Committee prior to submitting for building permits; and
- (iii) All Environmental Laws with respect to the Project Site and its design and construction of the Building Project and the additional environmental provisions set forth in the attached Exhibit I (the "Environmental Requirements"). As used herein, "Environmental Laws" means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Park or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act. "Hazardous Substances" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law.

5.5. Liens. Peregrine shall not allow any lien to be imposed upon the Building Project (if any) by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Peregrine. If any such lien shall at any time be filed against the Building Project, Peregrine shall cause the same to be discharged of record within 60 days after the date of filing the same, by either payment, deposit, or bond, or Peregrine shall provide the City with other security reasonably satisfactory to the City in an amount that will ensure the discharge of the lien plus costs and interest.

5.6. Insurance.

5.6.1. Peregrine shall require its Contractors and subcontractors to maintain public liability and property damage insurance, and shall require its design professionals to carry professional liability insurance, that protects the City, and its respective officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from work done in connection with the Building Project. This insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$2,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The limits of the insurance are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Building Project. The insurance will be without prejudice to coverage otherwise existing and will name as an additional insured, the City and its respective officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance will protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance will provide the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the term of the Building Project, Peregrine will require its Contractors and subcontractors to provide a new policy with the same terms. Peregrine's Contractors and subcontractors will maintain continuous, uninterrupted coverage for the duration of the Building Project. The insurance will include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Peregrine's Contractors or subcontractors. A certificate of insurance certifying the coverage required under this Agreement shall be maintained on file with the City's representative. The adequacy of this insurance shall be subject to the approval of the City Attorney.

5.6.2. Peregrine shall require its Contractors and subcontractors to obtain workers' compensation insurance for all of their workers and employees either as a carrier insured employer or as a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before commencing work on the Building Project. If such Contractors or subcontractors or their employees either are defined under that Chapter as nonsubject workers or are not defined under that Chapter as subject workers, the Contractors and subcontractors will elect and obtain workers' compensation insurance under ORS 656.039 before commencing work on the Building Project. A certificate of certifying the coverage required under this Agreement shall be maintained on file with the City's representative. The adequacy of this insurance shall be subject to the approval of the City Attorney. Peregrine's Contractors and subcontractors shall further agree to maintain this workers' compensation insurance coverage throughout the duration of the work on the Building Project.

5.7. **Maintenance and Warranty.** Peregrine shall ensure all warranties shall be provided to and in the name of City of Portland, Portland Parks & Recreation and that the following provisions are incorporated into the Construction Contract with each

Contractor. Peregrine's Contractors shall fully warrant all work for at least two (2) full years from Substantial Completion of the Project, regardless of the length of manufacturers' or installers' warranties. In addition to any other warranties that are required, Peregrine's Contractors shall make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the work occurring within two (2) years following the date of Substantial Completion due to faulty or inadequate materials or workmanship for all improvements. Such repairs and replacements shall conform to PP&R's Specifications under which the Contractor originally performed the work. In the event of a dispute regarding any portion of the work, the Contractor shall nonetheless provide any warranty service, repairs or replacements as described above, for that portion of the work that is not in dispute. In the event that a dispute delays acceptance of the work, the warranty for portions of the work not in dispute shall run from the date of Substantial Completion of the remaining portions of the work. Contractor shall also repair any damage or remedy any disturbance to other publicly owned property or improvements thereon if caused by Contractor's work and if the damage or remedy occurs during the warranty period. If Peregrine's Contractor performs warranty work, the warranty work also shall have a two (2) year warranty period from the date of its completion and acceptance by the City. The City shall provide Peregrine with written notice of the need to perform warranty work unless it is determined that an emergency exists, that delay would cause serious additional loss or damage, or if any delay in performing the work might cause injury to any member of the public. If Peregrine or Peregrine's Contractor, after written notice, fails within ten days to comply with the City's request, the City has the right to perform the warranty work either by hiring another contractor or by using its own forces. In such event, Peregrine, Peregrine's Contractor and its surety shall be liable to the City for the cost of the work performed and any additional damage suffered by the City. Peregrine's Contractor shall provide a bond during the two-year warranty period to guarantee the Contractor's performance of warranty work. Peregrine's Contractor shall provide to the City a bond in the amount of 20% of the Building Project cost in one of the following ways: (i) Continuance of the Construction Contract performance and payment bond; (ii) Any new performance and payment bond, acceptable to the City, which covers Peregrine's Contractor's warranty obligations imposed by the Construction Contract; (iii) Cash deposit to the City Treasury; Proof of the deposit shall be a receipt from the Treasurer; or (iv) Other arrangements proposed by Contractor that the City finds acceptable.

- 5.8. Performance and payment bonds.** Peregrine shall include a provision in its Construction Contracts that require each Contractor to provide performance and payment bonds for the Building Project in accordance with ORS 279C.380 and shall name the City as an obligee on each such bond. The forms for the performance bond and the payment bond will be the standard form of the City of Portland, Oregon and shall be subject to the approval of the City Attorney.

6. COMPLIANCE WITH CITY POLICIES

- 6.1. Good Faith Effort Program.** Peregrine shall comply with the City's Good Faith Effort Program by including provisions in its contract(s) with its contractor(s) that require such contractor(s) to comply with the City's Good Faith Effort Program and otherwise causing its contractor(s), and the subcontractors thereof, to comply with the City's Good Faith Effort Program.

6.2. Green Building Policy. In connection with the Building Project, Peregrine shall comply with the City’s Green Building Policy. Among other things, this policy requires Peregrine to construct the Project in the manner necessary to meet the applicable Green Building standard set forth in the Green Building Policy.

6.3. EEO Certification. Peregrine shall comply with the City’s EEO Certification Program by including provisions in its contract(s) with its contractor(s) that require such contractor(s) to comply with the EEO Certification Program and otherwise causing its contractor(s), and the subcontractors thereof, to comply with the EEO Certification Program. Peregrine shall also comply with all portions of the EEO Certification Program applicable directly to Peregrine and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Building Project.

7. DEFAULT AND REMEDIES

7.1. Default and Cure.

7.1.1. Default by Peregrine.

- (a) Peregrine shall be in default under this Agreement if Peregrine breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Peregrine receives written notice from PP&R specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Peregrine shall be in default under this Agreement if Peregrine does not commence the cure of the breach within thirty (30) days after Peregrine receives written notice from PP&R and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from PP&R.
- (b) Peregrine shall also be in default under this Agreement and PP&R shall be irreparably harmed by such default, if Peregrine constructs or operates any portion of the Building Project in a manner materially inconsistent with Final Construction Drawings and Technical Specifications.

7.1.2. Default by PP&R. PP&R shall be in default under this Agreement if PP&R breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after PP&R receives written notice from Peregrine specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, PP&R shall be in default under this Agreement if PP&R does not commence the cure of the breach within thirty (30) days after PP&R receives written notice from Peregrine and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Peregrine.

7.2. PP&R’s Remedies After the Issuance of the Notice to Proceed. If a Peregrine default occurs after its issuance of the Notice to Proceed, PP&R may, at its option: (i) terminate this Agreement by written notice to Peregrine and retain the Fields Payment, (ii) seek monetary damages against Peregrine, or (iii) specifically enforce the obligations of Peregrine under this Agreement. If PP&R terminates this Agreement as provided in this Section 7.2, then Peregrine shall deliver to PP&R within thirty (30) days after termination,

copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Peregrine by unrelated third parties, and which Peregrine is authorized to release. PP&R may use any of the foregoing documents in any manner that PP&R deems appropriate with the consent of any party having approval rights thereunder. PP&R shall pay no compensation to Peregrine for the foregoing Building Project documents.

7.3. Peregrine's Remedies After the Issuance of the Notice to Proceed. If a PP&R default occurs after its issuance of the Notice to Proceed, Peregrine may, as its exclusive remedy and at its option: (i) terminate this Agreement by written notice to PP&R without waiving any cause of action Peregrine may have against PP&R, or (ii) seek monetary damages against PP&R. Notwithstanding the foregoing, Peregrine shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PP&R in connection with PP&R's default.

7.4. Nonexclusive Remedies. The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

7.5. Unavoidable Delay.

7.5.1. Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault or negligence, including, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, or explosion.

7.5.2. A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

7.5.3. Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

8. MISCELLANEOUS PROVISIONS

8.1. PP&R Project Manager. For the purposes of managing the implementation of the provisions of this Agreement on behalf of PP&R, PP&R shall designate a Project Manager. As of the Effective Date, the Project Manager is Susan Meamber.

8.2. Discrimination. Peregrine, for itself and its successor and assigns, agrees that, during the construction of the Project, Peregrine will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

8.3. Notice. Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

In the case of a notice or communication to Peregrine, addressed as follows:

In the case of a notice or communication to PP&R, addressed as follows:

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

If either Party's notice contact person or address changes, that Party shall provide the other Party with the updated contact information.

8.4. Headings. Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

8.5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.6. Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PP&R or Peregrine of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.

8.7. Attorneys' Fees. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any

dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

- 8.8. Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
- 8.9. Calculation of Time.** All periods of time referred to herein 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 legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 8.10. Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 8.11. Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 8.12. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Park. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 8.13. Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 8.14. No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 8.15. Time of Essence.** Time is of the essence of this Agreement.
- 8.16. No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

8.17. Incorporation. The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

(signatures appear on the following page)

Executed in multiple counterparts as of the Effective Date.

PP&R:

By: _____

Name: _____

Title: _____ APPROVED AS TO FORM

James H. Van Dyke
CITY ATTORNEY

PEREGRINE:

By: _____

Name: _____

Title: _____

EXHIBITS

- Exhibit A.** Description of the Park
- Exhibit B.** Project Site
- Exhibit C.** Notice of Contractor Requirements
- Exhibit D.** Compliance Agreement
- Exhibit E.** Permit of Entry
- Exhibit F.** Scope of Development
- Exhibit G.** PP&R's Specifications
- Exhibit H.** Schedule of Performance
- Exhibit I.** Environmental Requirements

EXHIBIT A

DESCRIPTION OF THE PARK

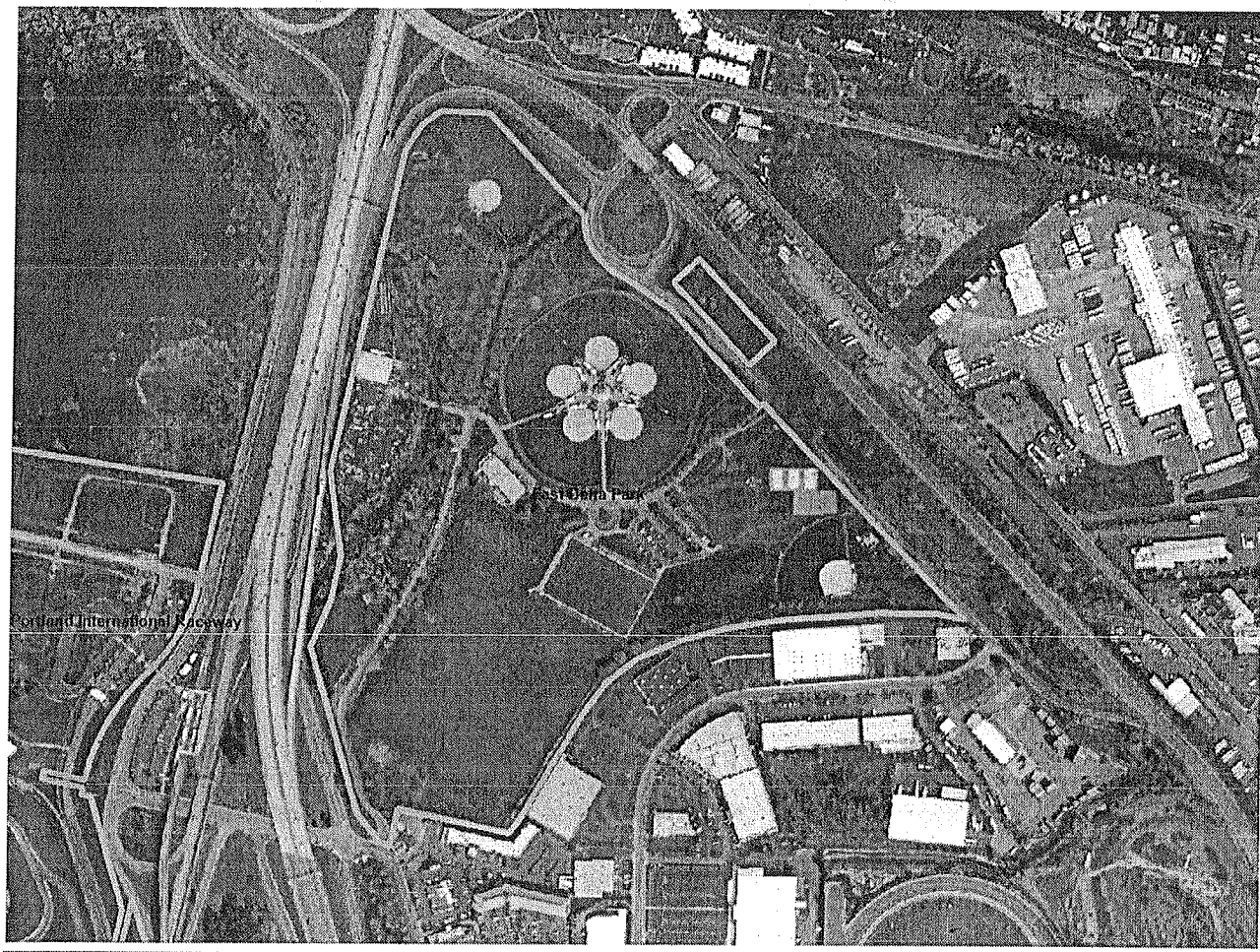


EXHIBIT B
PROJECT SITE



EXHIBIT CCONTRACTOR REQUIREMENTS

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. 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, 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 this contract, as applicable.

Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- 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(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- 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 279B.235(1), persons may not 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 when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

- 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 ORS 279C.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.

EXHIBIT D**Form of Compliance Agreement
(State Prevailing Wage)**

This COMPLIANCE AGREEMENT (this "Agreement") is made this ___ day of _____, 2013, by the City of Portland, a municipal corporation of the State of Oregon, acting by and through its Bureau of Parks & Recreation (the "City") and Peregrine Sports, LLC, an Oregon limited liability company ("Peregrine"). The City and Peregrine may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

Recitals

On and subject to the terms and conditions of that certain Development Agreement of even date herewith (the "Development Agreement"), the City granted Peregrine the right to develop and to contract for the construction of a new, City-owned building at Delta Park (the "Project"). Accordingly, the Project is a "public work" for purposes of Oregon's prevailing wage rate law, ORS 279C.800 to 279C.870 (the "PWRL"), administered by the Bureau of Labor and Industries ("BOLI"). This Agreement satisfies the legal requirement that certain terms of the PWRL be included in a contract between the City and Peregrine.

Agreement

1. Prevailing Wage Rate. The Project is a public work as defined by ORS 279C.800(6), and the Parties agree that Peregrine will comply with and require the general contractor for the Project (the "General Contractor") and all subcontractors to comply with all provisions in ORS 279C.800 through 279C.870 with respect to the Project. Peregrine may not select as the General Contractor, a person or entity on the BOLI list of ineligible. Each worker in each trade or occupation employed in the performance of the work on the Project, whether by the General Contractor, subcontractor or other person, must be paid not less than the applicable rate of wage, and Peregrine shall include this requirement in its contract with the General Contractor for the Project and ensure that this requirement is included in all subcontracts. Peregrine shall include in the contract specifications for the Project, the prevailing wage rates identified in Section 1(I) below, a provision stating that a fee is required to be paid to the BOLI Commissioner as provided in ORS 279C.825(1), and a provision stating that the General Contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt. Peregrine shall ensure that all required weekly certified payroll for the Project is submitted to the attention of the City's designated representative by the 5th working day of the following month, and all other required documentation prior to the General Contractor or a subcontractor commencing work on the site. Peregrine and the General Contractor shall withhold payment as prescribed by ORS 279C.845(7) through 279C.845(8) if certified payroll statements are not filed in the time and manner prescribed under ORS 279C.800 through 279C.870. Peregrine also agrees to ensure compliance and to include the following provisions in the contract with the General Contractor for the Project:

A. Certified Payroll. The General Contractor shall submit all required weekly certified payroll for work on the Project to both the Peregrine's designated representative and the City's designated representative by the 5th business day of the following month. The General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to submit all required weekly certified payroll for work on the Project to the attention of the General Contractor's representative by the 5th business day of the following month and (b) to include this provision in all of its subcontracts.

B. BOLI Fee. The City is required to pay a fee to BOLI as provided in ORS 279C.825(1) and pursuant to the administrative rule of the Commissioner. The total hard construction costs of the Project shall be used for the purpose of calculating the fee.

C. Public Works Bond. The General Contractor and all subcontractors, prior to starting any work on this Project, are required to file with the Construction Contractors Board a "public works bond" in the amount of \$30,000 with a corporate surety authorized to do business in the state of Oregon, unless exempt under the provisions of ORS 279C.836. The General Contractor shall file with the Construction Contractors Board a public works bond satisfying the foregoing requirements before commencement of work on the Project, unless otherwise exempt. The General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to have a public works bond satisfying the foregoing requirements filed with the Construction Contractors Board before commencement of work on the Project, unless otherwise exempt and (b) to include this provision in all of its subcontracts. The General Contractor shall verify that all subcontractors have filed the public works bond prior to commencement of work on the Project.

D. Contractor Eligibility. The General Contractor may not award a subcontract to any person or entity on the BOLI list of ineligible. The General Contractor shall include in each subcontract a provision (a) prohibiting the subcontractor from awarding a subcontract to a person or entity on the BOLI list of ineligible and (b) requiring the subcontractor to include this provision in all of its subcontracts. The General Contractor shall verify that none of the subcontractors are on the BOLI list of ineligible.

E. Work Day/Work Week. 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. In such cases, the employee shall be paid at least time and a half pay the regular rate of pay for: (1) 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 (2) 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 (3) all work performed on Saturday, and on any legal holiday specified in ORS 279C.540.

F. Employee Notice. The General Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520,

either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

G. Prompt Payment for Medical Services. The General Contractor shall promptly make payment, as due, 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 the General Contractor, of all sums which the General Contractor agrees to pay for such services and all moneys and sums which the General 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 per ORS 279C.530. The General Contractor shall also comply with ORS 656.017.

H. General Contractor's Failure to Make Prompt Payment. If, upon reasonable concern by Peregrine that the General Contractor has failed, neglected or refused to make prompt payment of any claim for labor, equipment, services or materials furnished to the General Contractor or a subcontractor by any person, or the assignee of the person, in connection with the Project as such claim becomes due, Peregrine may pay such claim to the person furnishing the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the General Contractor under the contract. Peregrine reserves the right to make payments directly or by multiple-payee check and the General Contractor hereby consents to such direct and multiple-payee check payments. Upon Peregrine's request, the General Contractor shall furnish to Peregrine the information required to facilitate such payments with each application for payment, including: (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons per ORS 279C.315.

I. Wage Rates: The prevailing wage rates for public works contracts in Oregon effective _____ October 1, 2013, are incorporated into this Agreement by reference. All workers shall be paid the applicable prevailing wage rate as set forth in these documents, for work performed on the Project. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to pay the prevailing wage rates identified in this Section and (b) to include this provision in all of its subcontracts. A copy of the applicable prevailing wage rates are available from BOLI or its website:

http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml

2. Notice. Any notice required or permitted under this Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail return receipt requested and addressed as follows:

To Peregrine:

To the City:

Copy to:

or to such other address as may be specified from time to time by any of the Parties in writing.

3. Miscellaneous.

A. Indemnification. Peregrine shall indemnify and hold the City, its employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees) which any of them may suffer or incur in connection with this Agreement, any transaction contemplated by this Agreement, or the undertaking or construction of the Project, except to the extent such liabilities, claims, losses, damages, or expenses arise solely from the gross negligence or willful misconduct of the City.

B. Counterparts. This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the Parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

D. Governing Law. This Agreement shall be governed by and construed under Oregon law.

E. Assignment. No Party may assign this Agreement without the prior written consent of the other Parties.

F. Modification; Prior Agreements; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by all Parties. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

G. Validity; Severability. If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

H. Time of Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as the date first set forth above.

PEREGRINE:

By: _____

Name: _____

Title: _____

THE CITY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

EXHIBIT E

FORM OF PERMIT OF ENTRY

Recitals:

The City of Portland (City), a municipality of the State of Oregon, through its Bureau of Parks and Recreation (Parks or PPR) is the owner of certain real property known as *Park* (Park) located within Multnomah County, State of Oregon.

Agreed:

- 1) **Grant of Permit of Entry.** Permittees are hereby granted a Permit to enter the Park for the purposes described in Section 4 of this Permit. The location of the work is illustrated on Attachment A hereto ("Premises").
- 2) **Term.** The term of this permit is approximately _____ months, beginning on _____, 20___. Authorized uses shall not commence until Permittees receive a Notice to Proceed from Parks' Project Manager. The Permit will expire at midnight on _____, 20___, unless otherwise agreed in writing. Permittee will notify the PPR Project Manager when the work has been completed.
- 3) **Acceptance of Premises.** Permittees have examined the Premises and accept them in an "as is" condition. City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Premises. City shall have no liability to Permittees for any damage or injury caused by the condition of the Premises. Furthermore, Permittees accept the Premises subject to any and all valid rights or interests, including, but not limited to: rights of access by the public; existing permits; licenses; leases; easements; franchise agreements; railroad facilities; pipelines, telephone, telegraph, communication, power and signal lines; or any similar facilities, together with any future installations thereof.

Permittee is hereby placed on notice that Portland General Electric Company owns and operates electric transmission facilities within the Springwater Corridor. If Permittee's use or work will occur in the Springwater Corridor, then Permittee shall be responsible for obtaining the approval of and consulting with Portland General Electric Company in order to avoid conflicting uses. Written evidence of said permission will be provided to the City prior to the commencement of construction under this Permit.

- 4) **Scope of Work or Use.** Work under this Permit consists of (*insert description of work*). All work associated with the project will be conducted in a first class professional manner with the highest and best work and safety standards and practices.

If deemed necessary by PPR, specific project plans will be attached to this Permit and, if attached, will be considered incorporated into the Permit by reference. The scope of work or use defined herein or attached constitutes the entirety of the expected use or scope of work. No changes to the scope of work or use are authorized without the prior written approval of PPR.

- 5) **As-Builts.** Permittees shall keep accurate maps and records, including the approved as-built construction plans and specifications of its facilities and improvements located in the Park. Permittees shall provide to Parks within sixty (60) days of the project being complete copies of such maps, records and as-builts, in a form (digital and paper) that is to the complete satisfaction of Parks. As-built specifications are included as Attachment _____.
- 6) **Park or Trail Closures.** Permitted work will not result in the Park being closed at any time without PPR approval. Permittee will take reasonable precautions to avoid conflicts between the permitted work and the public's use of the Park. (*Describe specific impacts?*)
- 7) **Project Manager.** Permittees shall coordinate with Parks Project Manager (*insert name and title*), who may be reached at his/her office phone: (503) 823-XXXX or by cell phone at (503) 823-XXXX. The contact for the Permittee (*insert name/title*) who can be reached at (xxx) xxx-xxxx or by cell at (xxx) xxx-xxxx. The contact for the Contractor is (*insert name/title*) who can be reached at (xxx) xxx-xxxx or by cell at (xxx) xxx-xxxx. The Parks Project Manager will be provided at least two business days' (Monday-Friday, City holidays excluded) notice prior to commencement of work under this Permit.
- 8) **Locates.** Permittees shall not begin any excavation or other subsurface activity in the Park without first contacting the One-Call Locates number and shall explicitly indicate the property is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344. Permittees shall also contact Mike VanYserloo, Parks Locates, at (503) 823-1611 at least three business days before commencing excavation or other subsurface activities on the Park.
- 9) **Trees and Urban Forestry.** For projects where there are potential tree impacts either above or below ground, Permittees shall include Dave Kahler from Urban Forestry in the Pre-Construction meeting and any other meetings. Mr. Kahler can be reached at (503) 823-1691 or by cell at (503) 823-8194. Permittees shall strictly manage construction limits to ensure the minimum disruption to existing vegetation.

Permittees shall make every effort to protect all trees, shrubs, ground cover and other vegetation existing on the Premises. Such protection includes, but is not limited to, acting in accordance with the following guidelines:

- Do not attach anything to trees.
- Do not lean anything against trees.
- Do ensure all engine and heat generating exhausts are directed away from tree canopies, as the heat can permanently burn leaves and twigs.
- Do not leak or discard anything (fuel, chemicals, compounds, rinsate, gray water, etc) within the canopy dripline.
- Do not drive or park any vehicles within the canopy dripline.
- Do not trim or prune any trees.

In the event that any trees are damaged, destroyed, or removed as a result of Permittees', or their agents or employees, acts or omissions, then damages shall be assessed against the Permittees in accordance with the Trunk Formula method set forth in the "Council of Tree and Landscape Appraisers" Guide For Plant Appraisal, as it may be revised. Currently, if a tree

were to be removed due to damage, Permittees would be charged at the rate of \$72.00 for each deciduous tree and \$60.00 for each evergreen tree, per square inch of trunk area. In the event that a tree is damaged, but not to the extent that it must be removed, then damages will be calculated as a percentage of the total value of the damaged tree, as estimated by the City's Urban Forester. Permittees shall also pay as damages, the costs associated with the City's appraisal of tree damage and lost tree value, as well as all costs associated with any repairs to the trees that are needed, as determined solely by the Urban Forester.

- 10) **Equipment and/or Materials to be used on site.** Equipment to be used includes (*list equipment*). Permittees assume all risk for any damage to their equipment while working under the authority of this Permit. Permittees shall keep all equipment within the confined work zone. All vehicles brought into the Park must be marked as corporate vehicles belonging to the Permittees, or its subcontractors, if any. Personal vehicles belonging to Permittees' employees shall not be parked in the Park.
- 11) **Maintenance, Repair and Restoration.** Permittees, at their cost, shall maintain the Premises in a neat condition, free of trash and debris, in good and substantial condition, order and repair. Permittees shall repair, at their cost and with prior written approval by Parks, any damage to the Park or surrounding City of Portland property caused by the work project and/or their entry or occupancy of the Park under this Permit. Restoration shall be made to conditions equal to or better than those pre-existing the Permittees' work. PPR, at its sole discretion, may elect to complete necessary repairs. Permittees agree to pay reasonable costs of repairs performed by the City.
- 12) **Security.** Permittees are responsible for providing, to Parks' satisfaction, signage, coning, and/or fencing to keep people away from equipment and work areas and to warn Park users of any hazards. Permittees shall give Parks prompt notice of any condition, disturbance, accident or occurrence on the Park related to their use or occupancy of the Park which might create a hazard to users of the Park property.
- 13) **Indemnification.** Permittees shall indemnify, defend, and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) Permittee's entry, use or occupancy of the Park, (ii) any failure of Permittees to comply with the terms of this Permit of Entry or any violation of law or ordinance, and (iii) the acts or omissions of Permittees, their officers, directors, agents and employees or invitees; provided, however, the Permittees shall not be liable for claims caused by the sole negligence of the City, its officers, directors, agents and employees. Permittees shall, at their own cost and expense, defend (with counsel acceptable to City) any and all suits which may be brought against Permittees or City, their officers, directors, agents and employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City or Permittees, their officers, directors, agents and employees in any such action or actions, including any appeals, in which they may be party defendants.

City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of Permittees or to any person in or upon the Park including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or

any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

City or its officers, directors, agents and employees shall not be liable for any latent defect at the Park. In addition to the indemnity provided above, Permittees agree to indemnify, defend and hold harmless City, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

Permittees, as a material part of the consideration to the City, hereby assume all risk of damage to property or injury to persons in, upon or about the Park from any cause other than the City's sole negligence, and Permittees waive all claims in respect thereof against City.

In the event that a Permittee is another bureau of the City, then Sections 13 and 14 of this Permit shall not apply as to that Permittee only, but shall still apply to any other Permittees or subcontractors.

- 14) **Insurance.** Permittees shall maintain public liability and property damage insurance that protects the Permittees and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Permittees' work under this Permit. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled or terminated prior to completion of the Permit, the Permittees shall provide a new policy with the same terms. The Permittees shall maintain continuous, uninterrupted coverage for the duration of the Permit. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Permittees.

Permittees shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance and additional insured endorsement certifying the coverage required under this Permit. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Permit by the City.

Permittees and all employers working under this Permit of Entry shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The Permittees shall maintain workers' compensation insurance coverage for the duration of this Permit. In the event the Permittees' workers compensation insurance coverage is due to expire during the term of this Permit, the Permittees shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Permittees shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

Permittees shall require all subcontractors working pursuant to this Permit to meet the same indemnification and insurance requirements (Sections 13 and 14 of this Permit) that are required of Permittees. All required Certificates of Insurance are attached to this Permit.

- 15) **Risk Management.** If a Permittee is a bureau of the City, then Sections 13 and 14 shall not apply to that Permittee since Parks and Permittee are both City of Portland bureaus and therefore covered by Risk Management. If there are any claims or damages arising from this project involving a Bureau Permittee or Parks, all responsibility for the damages shall be assigned by Risk Management to the Permittee. Any Permittees that are not City bureaus are not covered by Risk Management and are subject to Section 13: Indemnification and Section 14: Insurance.
- 16) **Public Involvement and Notification.** *Add description if PI plan is required. Delete if section not needed.*
- 17) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Park or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Park or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Park or surrounding Park property which constitutes a health hazard, as defined by the rules of the Health Division.
- 18) **Compliance with Laws.** In connection with its activities under this Permit, Permittees shall comply with all applicable federal, state and local laws and regulations. Permittees shall correct at Permittees' own expense any failure of compliance created by the fault or use of Permittees or their agents, employees or invitees. Permittees are responsible for determining and acquiring all other permits, licenses and approvals that may be required for this project. This Permit does not bind the City to take any particular course of action in regard to adjudicating other permit applications which are necessary to make the intended use of the Premises.
- 19) **Notice.** All notices under this Permit shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:

To PARKS: City of Portland
 Parks and Recreation – Property Manager
 1120 SW 5th Avenue, Room 1302
 Portland, OR 97204-1933

To PERMITTEES:
 Company Name
 Attn: contact name
 Address
 City, State, Zip

CONTRACTOR
 Company Name
 Attn: contact name
 Address
 City, State Zip

- 20) **Entry by City.** Parks reserves the right to enter upon the Park for any purposes, including inspection. City inspections are for the sole benefit of the City and do not constitute or imply acceptance of any work as conforming with the requirements of this Permit. The presence or absence of a City inspector does not relieve Permittees from any requirement of this Permit, nor is the inspector authorized to change any term or requirement of this Permit without the written authorization of the Parks' Property Manager.
- 21) **Oregon Law and Forum.** This Permit of Entry shall be governed by the laws of the State of Oregon. Any suit or action arising under this Permit shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
- 22) **Revocable Permit.** This Permit is revocable by PPR at any time for any reason, including failure of Permittee to comply with the terms and conditions of this Permit. No expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against PPR or the City, or be held to give the Permittees any vested or other right. In the event that the Permit is revoked, PPR's obligation is limited to refund of prepaid use fees, if any, prorated for the remainder of the Permit term.
- 23) **Waiver of Breach.** The waiver by the City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the Permittees shall in no way impair the right of the City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.
- 24) **Performance Guarantee.** If required at the sole discretion of PPR, Permittees shall guarantee performance hereunder in one of the following forms as approved by the City Attorney: surety bond executed by a company authorized to transact business in the State of Oregon; irrevocable letter of credit; set-aside account; cash bond; or another form acceptable to the City Attorney. Permittees shall maintain said guarantee(s) in place throughout the term of the Permit, except that Permittees may reduce the penal amount of such guarantee(s) from time to

time with the prior written consent of PPR Property Manager, which consent shall not unreasonably be withheld or denied. At no time during the term of the Permit shall the amount of the Guarantee(s) under this Section be reduced to below 20% of the original guarantee(s). [STANDARDS: Project bonding probably req'd for citizen-initiated projects over \$25K. Contractor general bonding req'd for citizen initiated projects below \$25K.]

- 25) **Termination.** Prior to the termination date provided for herein, or upon the Permit being revoked by PPR, Permittees shall restore the Premises as provided for herein to the satisfaction of PP&R and shall cease all activities on the Premises. Improvements authorized hereunder shall not remain in the Park without written authorization from PPR, which may be in the form of a written extension to this Permit or a separate agreement between PPR and Permittees.
- 26) **No Liens.** Permittees shall keep the Premises and adjacent City property used in connection with this Permit free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Permittees.
- 27) **Entire Agreement.** This Permit contains the entire agreement between PPR and the Permittees and supersedes all prior written or oral discussions or agreements.
- 28) **Illegality.** If any provision of this Permit is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Permit, and this Permit shall remain in full force and effect without such invalid, illegal, or unenforceable provision.
- 29) **Assignability.** This Permit is not assignable.
- 30) **Counterparts.** The parties listed above may execute this instrument in two or more counterparts, which when taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Permit of Entry to be executed in triplicate on the dates shown below.

PERMITTEES

Print Name

Title

Signature

Date

Contractor

Print Name

Title

Signature

Date

CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION

Mike Abbaté
Director of Parks and Recreation

Date

APPROVED AS TO FORM

Chief Deputy City Attorney

EXHIBIT F

SCOPE OF DEVELOPMENT

EXHIBIT G

PP&R'S SPECIFICATIONS

186266

EXHIBIT H

SCHEDULE OF PERFORMANCE

186266

EXHIBIT I

ENVIRONMENTAL REQUIREMENTS