

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated effective \_\_\_\_\_, 2009 is by and between 27 South Tejon Partners, LLC, a Colorado limited liability company and LandCo 27 LLC, a Colorado Limited Liability company, as tenants-in-common ("Seller"), and the City of Colorado Springs Public Facilities Authority ("PFA" and "Buyer"), a Colorado nonprofit corporation and an issuer on behalf of the City of Colorado Springs ("City"); (Seller and Buyer may be referred to herein collectively as "Parties").

### **RECITALS**

A. **Whereas**, Seller owns certain land and improvements which are located at 27 South Tejon Street, Colorado Springs, CO, to be known as the "Headquarters Building"; and,

B. **Whereas**, Seller desires to sell and Buyer desires to purchase Floors 2 – 6 of the Headquarters Building with each floor to be a separate condominium unit and known collectively as the "USOC Condominium", upon the terms and subject to the provisions of this Agreement, the Amended and Restated Condominium Declaration for 27 South Tejon Commercial Condominiums and the Articles of Amendment to the Articles of Incorporation of 27 South Tejon Commercial Condominium Association, Inc.

**IN CONSIDERATION** of the foregoing recitals, the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties hereto agree as follows:

### **ARTICLE 1.** **PURCHASE AND SALE**

1.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Buyer agrees to purchase and pay for the USOC Condominium, Floors 2 - 6 in the Headquarters Building located at 27 South Tejon Street, Colorado Springs, Colorado. The description of the USOC Condominium is attached as Exhibit A.

1.2 **Purchase Price.** The purchase price ("Purchase Price") for the USOC Condominium is Eighteen Million Eight Hundred Thousand Dollars (\$18,800,000) for the USOC Condominium in the completed core and shell of the Headquarters Building. Completion of the core and shell of the Headquarters Building shall be as defined in Exhibit B. The obligation of Buyer to close the purchase under this Agreement is specifically conditioned upon the issuance of Certificates of Participation ("COP"), which is to be completed within 45 days of the approval and signature of the Settlement Agreement and

Mutual Release regarding the litigation between LandCo the City and the PFA, *LandCo Equity Partners, LLC, et al. v. The City of Colorado Springs, et al*, U.S. District Court for the District of Colorado, case no. 09-cv-00692 and the execution of a sublease between the City and the United States Olympic Committee (“USOC”) for the USOC Condominium.

1.3 Closing. The Buyer shall purchase the USOC Condominium upon completion of the core and shell of the Headquarters Building as defined in Exhibit B and having completed all six (6) criteria listed therein, on or before September 30, 2009 (“Closing Date”), and (1) conditioned upon the USOC’s prior execution of a sublease with the City for the USOC Condominium in the Headquarters Building and (2) conditioned upon the issuance of COPs which funds in the amount of Eighteen million, eight hundred thousand dollars (\$18,800,000) shall be used to fund the Purchase Price. Failure to complete the core and shell of the Headquarters Building as defined by Exhibit B on or before September 30, 2009, without prior written authorization of the City, shall result in a \$1,500 per day reduction to the Purchase Price. Failure to complete the core and shell of the Headquarters Building as defined by Exhibit B on or before October 15, 2009, shall be a material breach of this Agreement and the PFA, at its option, shall not be obligated to purchase the USOC Condominium. In addition, should there not be a sublease between the USOC and the City for the USOC Condominium or should the COPs not be successfully issued, Buyer shall have no further obligations under this Agreement and this Agreement shall be terminated as set forth below.

## **ARTICLE 2.** **DOCUMENTS TO BE DELIVERED TO BUYER**

2.1 Documents to be Delivered to Buyer. With respect to the USOC Condominium, Seller shall deliver to Buyer at Seller’s expense:

2.1.1 No less than thirty (30) days prior to the Closing Date, an ALTA extended coverage (standard pre-printed exceptions deleted) title insurance commitment issued by the Stewart Title Company showing the status of record title to the USOC Condominium and its underlying real property, along with legible copies of all recorded documents referred to therein (collectively, the "Commitment"). Buyer, the City of Colorado Springs and the USOC shall be named as the insured parties thereunder, and the Policy shall be issued in the amount of the Purchase Price.

2.1.2 No less than fifteen (15) days prior to the Closing Date, an ALTA/ACSM Land Title Survey (“Survey”) for the underlying real property and the USOC Condominium air rights, to be dated not more than ninety (90) days prior to the Closing shall be certified to Buyer and the Title Company.

2.1.3 No less than ten (10) days prior to the Closing Date, copies of all plans, specifications, working drawings, soil test, engineering reports, maintenance reports, warranties, roof bonds, asbestos and environmental inspection reports, insurance policies and all other similar records, if any, in the possession of Seller and directly pertaining to the

USOC Condominium shall be given to Buyer and its insurer or trustee, to the extent identified by Buyer.

2.1.4 No less than five (5) days prior to the Closing Date, Seller shall provide Buyer all assignable warranties which result from the construction of the USOC Condominium, which warranties shall be made an attachment hereto, Exhibit C.

2.1.5 On or prior to the Closing Date, Seller shall pay to the El Paso County Treasurer all due and owing back taxes on the Headquarters Building through the Closing Date and all taxes for 2009 due in 2010 shall be prorated to the Closing Date and either paid to the Buyer or constitute a deduction from the Purchase Price as otherwise set forth herein on the date of Closing.

2.1.6 No less than five (5) days prior to the Closing Date, Seller shall provide copies of all plans and specifications for the core, shell and tenant finish and a letter from Oz Architecture allowing the City to use them **at no cost to the City or PFA, except that the PFA shall pay for plans and specifications directly related to tenant finish.**

### **ARTICLE 3.** **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as of the Closing Date as follows:

3.1 Status and Authority. Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Colorado. Seller has full power to own the USOC Condominium and to carry on its business as now being conducted, and has the right, power, legal capacity and authority, to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto.

3.2 Title to the USOC Condominium. Seller has fee simple title to the USOC Condominium, free and clear of all mortgages, liens, pledges or other encumbrances, covenants and restrictions, except for those easements and restrictions of record commonly associated with downtown Colorado Springs properties, and as disclosed in the Commitment to be delivered by Seller to Buyer.

3.3 Liabilities. There are no liens, obligations, encumbrances or liabilities of any nature whatsoever, contingent or otherwise, on the USOC Condominium or any circumstances which may form the basis for any liens or other encumbrances on the USOC Condominium.

3.4 Litigation. There are no actions, lawsuits or other proceedings which are pending or, to the best of Seller's knowledge, threatened against the USOC Condominium or Seller with respect to its interests in, management and rental of, or other activities with respect to, the USOC Condominium after the Closing Date.

3.5 Zoning and Compliance with Law. Seller has not received written notice of any violation of any applicable federal, state or local law or regulation, including without limitation, any applicable building, zoning or other law, ordinance or regulation, which affect or may affect the USOC Condominium or its operations. Seller has no knowledge of any commitments or agreements with any governmental authority or agency affecting the USOC Condominium.

3.6 No Defaults. The consummation of the transactions contemplated by this Agreement shall not result in the breach of any of the terms or provisions of, or constitute a default under any material agreement or other material instrument to which Seller is a party or by which Seller is otherwise bound which may adversely impact Seller's ability to transfer all or any portion of the USOC Condominium to Buyer

3.7 Environmental Report/Audit. The Parties agree that this USOC Condominium will be completely rebuilt to a "Class A" office space standard and that it will comply with all applicable building codes when complete. The Parties acknowledge that the Buyer intends to buy the USOC Condominium. Acceptance of the Property's condition will be subject to all relevant provisions of the City Code, particularly City Code §7.7.1802 which provides that the Property will need a Phase I or II environmental report or an environmental audit. Seller shall submit all environmental audit or Phase I environmental assessments and documentation of removal of hazardous waste or materials including, without limitation, asbestos, pcb's, lead, urea formaldehyde and all materials or substances deemed hazardous under the United States Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder or any similar federal, state or local laws to the City for its review at least thirty (30) days prior to Closing in accordance with all relevant provisions of the City Code, particularly City Code §7.7.1802.

3.8 As-Is Sale. Except as expressly set forth in this Agreement, the Parties acknowledge that the Buyer intends to buy the USOC Condominium "as is", subject to all warranties. Acknowledging the prior use of the Headquarters Building and Buyer's opportunity to inspect the USOC Condominium space, and except as expressly set forth in this Agreement, Buyer agrees to take the USOC Condominium on an "as is" basis, subject to warranties. Buyer acknowledges and agrees that except as expressly set forth in this Agreement, that neither Seller nor its agents, contractors or representatives have made any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the nature, quality or condition of the USOC Condominium, including without limitation the water, soil and geology, (b) the income which may be derived from the USOC Condominium, (c) the compliance of or by the USOC Condominium of its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (d) the habitability, merchantability or fitness for a particular purpose of the USOC Condominium, or (e) any other matter with respect to the USOC Condominium and specifically disclaims any representations and specifically disclaims any representations regarding termites. Seller releases, indemnifies and holds Buyer harmless from any liability to any party (including any federal, state or local governmental authority) arising out of the existence, removal or remediation of any

hazardous substances, hazardous waste or materials including, without limitation, asbestos, pcb's, lead, urea formaldehyde and all materials or substances deemed hazardous under the United States environmental protection agency regulations or under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder, or any similar federal, state or local laws and authority in, on or under the USOC Condominium at and before the time of Closing.

3.9 Contractor Warranties. At Closing, Seller shall assign all warranties resulting from the construction of the USOC Condominium to Buyer.

**ARTICLE 4.**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

4.1 Status and Authority. The PFA, as Buyer, is a Colorado nonprofit corporation and an issuer on behalf of the City of Colorado Springs, Colorado, validly, duly organized and existing and in good standing under the laws of the State of Colorado. Buyer has full power to own the USOC Condominium and to carry on its business as now being conducted, and has the right, power, legal capacity and authority, to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto.

4.2 No Defaults. The consummation of the transactions contemplated by this Agreement will not result in the breach of any of the terms or provisions of, or constitute a default under any material agreement or other material instrument to which Buyer is a party or by which it or any portion of the USOC Condominium may be bound.

**ARTICLE 5.**  
**SELLER'S OBLIGATIONS BEFORE CLOSING**

Seller shall complete the core and shell of the Headquarters Building in accordance with the terms and conditions of Exhibit B.

**ARTICLE 6.**  
**TITLE COMMITMENT REVIEW.**

Buyer shall have a period of fifteen (15) days after the receipt of the Commitment to either approve of the exceptions (if any) contained therein, or to notify Seller in writing (the "Title Objection Notice"), specifying any exceptions to which Buyer objects (the "Title Objections"). Seller shall have a period of seven (7) business days after Seller's receipt of the Title Objection Notice (a) to remove, or agree to remove prior to the Closing, some or all of Title Objections, and to inform Buyer of the same, or (b) to advise Buyer, in writing, that Seller will not agree to remove some or all of the Title Objections; the foregoing election by Seller being at Seller's sole option and discretion ("Title Response Notice"). If Seller fails to timely deliver to Buyer the Title Response Notice, it shall be conclusively deemed that Seller has elected not to remove any of the Title Objections. If Seller advises Buyer in its Title Response Notice that it

will not remove or agree to remove some or all of the Title Objections (or Seller is deemed to have so advised Buyer), then Buyer shall have until three (3) days after Buyer's receipt of Title Response Notice to advise Seller, in writing, whether Buyer elects to waive such objections and proceed with the Closing of the USOC Condominium or to terminate this Agreement. Failure by Seller to remove those specified exceptions which Seller has expressly agreed to remove in the Title Response Notice within the specified period shall be deemed to be a failure of this condition, in which event the Agreement shall terminate, and the parties shall have no further obligations hereunder unless Buyer withdraws its objections in writing.

**ARTICLE 7.**  
**BUYER'S RIGHT OF ENTRY**

Buyer and Buyer's representatives, agents, consultants and designees shall have the right, during normal business hours, to enter upon the USOC Condominium, at Buyer's sole cost, for any purpose in connection with its proposed purchase, development or operation of the USOC Condominium, including the right to make such inspections, investigations and tests as Buyer may elect to make or obtain; provided, however, any entry of Buyer hereunder shall be conducted in such a manner as to minimize the inconvenience caused to Seller or any tenants of the USOC Condominium.

**ARTICLE 8.**  
**CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE**

The obligation of Buyer to purchase the USOC Condominium and Seller's right to payment of the Purchase Price is subject to the provisions of Article 1 above, and the satisfaction of the following contingencies. Any of the conditions set forth in this Article 8 may be waived by Buyer or the Seller, as the case may be, in writing designated as a waiver or amendment to this Agreement.

8.1 Accuracy of Representations of Seller. At the Closing, Buyer shall receive a certificate dated the Closing Date (as herein defined), executed by Seller, certifying that all the representations and warranties of Seller set forth in this Agreement are true in all material respects.

8.2 Compliance with Covenants. Seller and Buyer shall have materially complied with all the terms, conditions and covenants set forth in this Agreement.

8.3 Seller's Failure to Perform. If Seller is in material default of this Agreement or of any of the requirements of the Seller's Lender regarding the USOC Condominium, the Buyer does not have to perform under the terms and conditions of this Agreement and shall have such remedies as are available hereunder and under law.

8.4 Buyer's Financing. Buyer's only source of financing is fully dependent upon the successful issuance of its Certificates of Participation in an amount sufficient to fund the purchase price of the USOC Condominium.

8.5 USOC Sublease. Buyer shall have no obligation to purchase the USOC Condominium unless there is a valid and fully executed USOC Sublease for the USOC Condominium with the City.

8.6 Assignment of Warranties. Seller shall have provided all warranties related to the USOC Condominium for review by Buyer.

8.7 Condominium Declarations, By-Laws, Rules. Seller shall have provided all applicable condominium declarations, by-laws and rules to Buyer for review by Buyer.

## **ARTICLE 9.** **THE CLOSING**

9.1 The Closing. The Closing shall take place as set forth in Paragraph 1.3 and be facilitated through Stewart Title.

9.2 Obligations of Seller at Closing. The following events shall occur at the Closing:

9.2.1 Seller shall execute, have acknowledged and deliver to Buyer a special warranty deed conveying title to Buyer free and clear of all liens and encumbrances except easements and restrictions of record commonly associated with downtown Colorado Springs properties or accepted by the Buyer in accordance with Article I, above.

9.2.2 Buyer shall have received either (a) an owner's policy of title insurance on the USOC Condominium to be issued pursuant to the Commitment (as updated and approved by Buyer), delivered to Buyer and showing no lien, encumbrance or other restriction other than such exceptions referred to above or (b) a written commitment from the Title Company to deliver such policy.

9.2.3 Seller shall deliver to the Title Company such evidence as the Title Company may require confirming that Seller is not a "foreign person" in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

9.2.4 Seller shall deliver, or cause to be delivered, such other instruments and documents as may be reasonably required to transfer title to the USOC Condominium or to otherwise close the transactions contemplated in this Agreement.

9.2.5 All USOC Condominium taxes levied against the USOC Condominium; and other regular expenses, if any, affecting the USOC Condominium shall be paid as of the Closing in accordance with the provisions set forth below. For purposes of calculating prorations, Buyer shall be deemed to be in title to the USOC Condominium, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Closing occurs. Any apportionments and prorations which are not expressly

provided for below shall be made in accordance with customary practice in the Colorado Springs, Colorado metropolitan area. To the extent any revenues or costs are not reasonably ascertainable, such adjustments, if and to the extent known and agreed upon as of the Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the proration result in a net credit to the Buyer), by increasing or reducing the cash portion of the purchase price to be paid by Buyer at the Closing.

(a) Any real estate taxes and assessments on the Land and Improvements and any taxes on the USOC Condominium shall be prorated based on the actual current tax bill or the most recent levy and assessment information;

(b) All utility service charges for electricity, heat and air conditioning service, other utilities, elevator maintenance, common area maintenance, taxes (other than real estate taxes and personal USOC Condominium taxes), and other expenses incurred in operating the USOC Condominium that Seller customarily pays shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue to the day of Closing and Buyer shall pay all such expenses accruing after the Closing and thereafter. Seller and Buyer shall obtain billings and meter readings as of the day of the Closing to aid in such proration;

(c) All capital and other improvements (including labor and materials) which are performed or contracted for by Seller prior to the Closing Date will be paid by the Seller, without contribution or proration from Buyer. If expenses contracted for but not billed prior to the day of Closing exist, the expenses will remain the obligation of the Seller.

9.3 Obligations of Buyer at Closing. At the Closing, Buyer shall cause the funds for the purchase of the USOC Condominium to be delivered to a title company, to be distributed to pay LandCo's third-party expenses at LandCo's direction. Closing costs and adjustments shall be allocated as follows:

(a) Seller shall pay the cost of the owner's policy of title insurance to be provided pursuant to the terms of this Agreement, and the recording fees associated with the transfer of title under this Agreement.

## **ARTICLE 10** **DEFAULT AND TERMINATION**

10.1 Time is of the essence. Time is of the essence for the obligations of the Parties. However, if the USOC Sublease is not fully executed by the USOC on or before the Closing Date or if the COPs are not successfully issued, this Agreement shall be null and void and the Seller and Buyer shall be relieved of all duties and obligations specified in this Agreement.

10.2 Seller's Default. If Seller shall default in performing its duties and obligations in this Agreement, Buyer may file an action for specific performance or may avail itself of other remedies available at law or in equity.

10.3 Termination. Upon termination of this Agreement under this Article 10, or any other provision of this Agreement, neither Seller nor Buyer shall thereafter have any further obligations to the other hereunder except as expressly provided in this Agreement.

**ARTICLE 11**  
**CASUALTY**

Risk of loss to the USOC Condominium from fire or other casualty shall be borne by Seller up to the day of the Closing. If the USOC Condominium is damaged by fire or other casualty prior to the Closing, Seller shall assign to Buyer all of its right, title and interest in and to the proceeds of any and all fire or other casualty insurance relating to such damage, and the Buyer shall be entitled to a credit against the Purchase Price in an amount equal to the deductible portion of the insurance policy. If restoration is necessary under this Section, Buyer acknowledges and agrees that Seller, or an affiliated entity of Seller, shall complete the restoration, provided that Seller shall perform such work at market rate.

**ARTICLE 12**  
**SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in an instrument delivered pursuant to this Agreement. Except as may be expressly provided herein, the representations, warranties and indemnities made by the parties to this Agreement and the covenants and agreements to be performed or complied with by the respective parties under this Agreement before the Closing Date shall be deemed to be continuing and shall survive the Closing for a period of one (1) year. Nothing in this Article 12 shall affect the obligations of the parties with respect to covenants and agreements contained in this Agreement that are permitted or required to be performed in whole or in part after the Closing Date.

**ARTICLE 13**  
**MISCELLANEOUS**

13.1 Effect of Headings. The subject headings of sections and subsections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

13.2 Entire Agreement/Survival of Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, representations and understandings of the parties regarding the subject matter of this Agreement, with the exception of the Settlement Agreement and Mutual Release, whose terms shall control in the event of a conflict. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. This Agreement and all provisions hereof shall survive the Closing contemplated hereunder except as expressly set forth herein to the contrary. If any provision of this Agreement is unenforceable in whole or in part, such provision shall be limited to the extent necessary to

render the same valid, or shall be excised from this Agreement as circumstances require, and this Agreement shall be construed as if such provision had been incorporated herein as so limited, or as if such provision had not been included herein, as the case may be.

13.3 Counterparts; Facsimile Copies. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic delivery shall be effective as delivery of a manually executed counterpart of this Agreement.

13.4 Assignment. This Agreement may be assigned by Buyer and shall be binding on and shall inure to the benefit of the parties to it and their respective successors and assigns. No other assignment shall be permitted without the written consent of Seller.

13.5 Notices. All notices and other communications under this Agreement shall be in writing and shall be given by electronic facsimile transmission (if receipt is verified), by registered or certified mail (postage prepaid and return receipt requested) or by an overnight courier service (which obtains a receipt evidencing delivery) and shall be addressed as follows:

To Buyer at:

City of Colorado Springs Public Facilities Authority  
City Hall  
107 N. Nevada Avenue  
Colorado Springs, Colorado 80903  
Attention: City Manager  
Telephone: 719.385.5455  
Facsimile: 719.385.5488

With a copy to:

City Attorney/Chief Legal Officer  
30 S. Nevada Avenue, Suite 501  
Colorado Springs, CO 80903

To Seller at:

Ray Marshall  
LandCo Equity Partners, LLC  
19 N. Tejon, Suite 105  
Colorado Springs, CO 80903

Draft Purchase and Sale Agreement  
July 24, 2009

With a copy to:

Marc J. Musyl  
Greenberg Traurig, LLP  
1200 Seventeenth Street, Suite 2400  
Denver, CO 80202

and  
Reid Page  
Steve Long  
Polsinelli Shughart, PC  
1050 Seventeenth Street, Suite 2300  
Denver, Colorado 80265

or such other address as any party may designate to the other parties hereto in accordance with the aforesaid procedure. All notices and other communications shall be deemed to have been given on the date sent if the notice is delivered by electronic facsimile transmission, three (3) days after deposit in the United States mail or one (1) day after deposit with an overnight courier service, as the case may be.

13.6 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, the Charter of the City of Colorado Springs and the City Code of the City of Colorado Springs.

13.7 Broker's Fees. Each of the parties represents and warrants that it has not employed, retained or otherwise utilized any broker or finder in connection with any of the transactions contemplated by this Agreement.

13.8 Recovery of Litigation Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorney fees and costs, in addition to any other relief to which it or they may be entitled.

**SELLER:     27 South Tejon Partners, LLC**

By: \_\_\_\_\_  
Raymond L. Marshall  
Manager, 27 South Tejon Partners, LLC

Draft Purchase and Sale Agreement  
July 24, 2009

**LandCo 27, LLC**

By: \_\_\_\_\_  
Raymond L. Marshall  
Manager, LandCo 27, LLC

**BUYER: CITY OF COLORADO SPRINGS PUBLIC FACILITIES AUTHORITY**

By: \_\_\_\_\_  
Lionel Rivera  
President, City of Colorado Springs Public Facilities Authority

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Patricia K. Kelly, City Attorney/Chief Legal Officer and  
Legal Advisor to the City of Colorado Springs Public Facilities Authority