

**SUBJECT TO CITY COUNCIL CONSIDERATION; THEN
FEDERAL COURT APPROVAL**

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into on this ____ day of _____ 2009, by and between LANDCO EQUITY PARTNERS, LLC; 27 SOUTH TEJON PARTNERS, LLC; LANDCO 27, LLC; LANDCO 19 NORTH TEJON, LLC (referred to herein collectively as “Plaintiffs” or “LandCo”) and THE CITY OF COLORADO SPRINGS, COLORADO; THE CITY OF COLORADO SPRINGS PUBLIC FACILITIES AUTHORITY (referred to herein collectively as “Defendants” or “the City”). Each of the foregoing parties or groups of parties is sometimes referred to herein as a “Party” and collectively as the “Parties.”

PREAMBLE

Whereas, beginning in March 2008, LandCo, the City, and the United States Olympic Committee (“USOC”) entered into a series of agreements with the goal of retaining the headquarters of the USOC in the City of Colorado Springs, Colorado; and

Whereas, LandCo, the City, and the USOC agreed to enter into several contracts that outlined the parties’ obligations as to the agreement (“Contract Documents”). On or about March 31, 2008, all three parties entered into the Economic Development Agreement Regarding USOC Facilities (“EDA”), the broadest contract among the Parties. The EDA outlined the Parties’ intentions relating to the total package of incentives the USOC would receive; and

Whereas, on or about March 31, 2008, LandCo and the USOC entered into the Design-Build Contract. The Design-Build Contract outlined the Parties’ intentions relating to construction of the USOC Headquarters Building located at 27 South Tejon Street (“Headquarters Building”); and

Whereas, on or about May 6, 2008, LandCo and the City of Colorado Springs Public Facilities Authority (“PFA”), entered into the Purchase and Sale Agreement. This agreement outlined the conditions by which LandCo would sell and the PFA would purchase the USOC Condominium; and

Whereas, LandCo filed a Complaint against several Defendants, including the City, in the United States District Court for the District of Colorado, entitled *LandCo Equity Partners, LLC, et al. v. The City of Colorado Springs, Colorado, et al.*, Case No. 09-cv-00692-DME-MEH (the “Lawsuit”), in which LandCo sought various remedies; and

Whereas, each Party denies any wrongdoing or liability to the other; and

Whereas, given the uncertainty and expense of litigation the Parties wish to enter into

this Agreement to resolve all claims, counterclaims, allegations and defenses which they had or could have raised against each other in the Lawsuit.

NOW, THEREFORE, in consideration of the mutual promises as set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Dismissal of Claims.

1.1 Dismissal Without Prejudice. Upon the execution of this Agreement, LandCo shall dismiss the Lawsuit without prejudice, by directing its counsel to execute and file with the Court a Stipulation of Dismissal Without Prejudice, each Party to bear its own costs and attorneys' fees.

1.2 Notwithstanding the foregoing, the Parties expressly acknowledge that once this Agreement is signed: (1) if the COP Process Start Date (as defined in paragraph 2.4) does not begin on or prior to August 11, 2009; (2) if the PFA does not issue the COPs pursuant to paragraph 2.5; or (3) if the PFA does not purchase the USOC Condominium, as defined in Paragraph 2.1(b), pursuant to paragraph 2.6; or (4) if the City or PFA breach a material term of this Agreement or any of the contracts as contemplated hereunder, the Lawsuit, as it currently exists, may be re-filed. Consistent with federal and state law, including without limitation, Federal Rule of Evidence 408, if the claims in the Lawsuit are re-filed against any Party, evidence concerning any efforts by any Party towards resolving this lawsuit cannot be used by the Parties in this or any other lawsuit.

1.3 Dismissal With Prejudice. Once the COPs are successfully issued by the PFA, and all obligations of the City and PFA specified in this Agreement, as well as all material obligations outlined in the contracts identified in this Agreement, are completed, including the purchase of the USOC Condominium (as defined in paragraph 2.1(b)), LandCo shall dismiss the Lawsuit with prejudice, if it is still pending in the U.S. District Court, and be forever barred from filing another lawsuit involving these same matters raised in the Lawsuit.

2. Consideration for Settlement and Compromise.

2.1 Initial Matters

The Parties agree that the following documents must be prepared and agreed to and ready for execution on or before July 24, 2009, unless otherwise mutually agreed in writing by the Parties. A full timeline of events contemplated in this Agreement is attached for the Parties' convenience as Exhibit A:

a) Revised Condominium Documents agreed to by LandCo, the City, the USOC, and United Western Bank, with the PFA bearing the cost of filing the revised Condominium Documents from COP proceeds; and

b) A mutually agreeable contract for Purchase and Sale between the PFA and LandCo for the purchase of Floors 2-6 of the Headquarters Building, each of which shall be a

separate condominium (“USOC Condominium”), the essential terms of which shall require LandCo to complete the core and shell of the entire Headquarters Building, as defined by Exhibit B, and upon this and other tasks outlined in this Agreement, the PFA will purchase the USOC Condominium for a price of \$18,800,000, to be distributed to pay LandCo’s third-party expenses at LandCo’s direction pursuant to the Purchase and Sale Agreement, and contingent upon the successful issuance of COP proceeds and the execution of a sublease of the USOC Condominium by the USOC, but in no event shall the purchase of the USOC Condominium occur before the end of 45 days after the COP legal offering process (the “COP Process”) has begun. LandCo shall have no obligation to complete any tenant improvements of the Lobby Areas of Floors 1, 3, 4, 5 and 6 to the design and specifications previously agreed to in applicable construction documents, nor will LandCo have any obligation for the cost of the installation of a separate and additional freight elevator to serve the USOC Condominium; and

c) A loan commitment from United Western Bank verifying financing sufficient for LandCo to complete the core and shell and pay third-party expenses of the Headquarters Building; and

d) An agreement between G. E. Johnson Construction Company (“GEJ”) and LandCo, certifying to the City, that no liens resulting from any disputes between GEJ and LandCo, will be placed on the USOC Condominium and proof of lien waivers from suppliers and vendors shall be given to the City on or before Closing.

2.2 City Council Vote Authorizing Execution of Agreement

Assuming that the obligations set forth in paragraph 2.1 are met by July 24, 2009 the City of Colorado Springs City Council (“City Council”) is expected to vote on this Agreement on or before August 11, 2009. This process will include the following events: (i) after all documents referenced in paragraph 2.1(a - d), the City – USOC EDA and this Agreement are in final form, the documents will be made publicly available for at least seven (7) calendar days, and (ii) these documents will be placed on the agenda of a special or regular Formal City Council meeting.

2.3 Assignment of Rights And Funds For the National Governing Bodies Building (“NGB”) Renovation Project

a) Within five (5) days of execution of this Agreement, LandCo shall transfer all funds in the NGB Escrow Account in the sum of at least \$746,708, plus any and all accrued interest from June 1, 2009 through the date of transfer to a financial institution designated by the City. This amount may be reduced by draws from the account between June 30, 2009 and the date of transfer upon written approval by both the City and LandCo.

b) On the same date of transfer of the account(s) and funds, a LandCo affiliate will assign all rights under its contract with The Copestone Company (“Copestone”) for the renovating the property owned by the City and now known as the National Governing Bodies Building (the “NGB Building”). Upon such transfer, LandCo shall have no further responsibility for completing the renovation of the NGB Building.

c) The City and LandCo shall take all actions necessary to facilitate the assignment of the contract between Copestone and a LandCo affiliate to the City

2.4 The Initiation of the Certificate of Participation Process

a) The PFA contemplates purchasing the USOC Condominium with funds generated from the successful issuance of COPs by the PFA and subject to a sublease executed by the USOC.

b) The COP Process shall begin immediately after execution of this Agreement on the day after approval by City Council (“COP Process Start Date”). The City shall provide evidence that the initiation of the COP Process has started within seven days after City Council approval and the execution of this Agreement. Such evidence shall be in the form of a letter to LandCo’s designated legal counsel from Kutak Rock, LLP.

c) During the COP Process, LandCo’s legal counsel shall, at all reasonable times, be permitted to contact the City and PFA’s legal counsel and obtain updates as to the status of the COP Process. LandCo’s legal counsel shall not otherwise become involved in the COP Process. Other than publicly available documents, LandCo’s legal counsel shall not be entitled to access to COP Process Documents. Notwithstanding the foregoing, to the extent that LandCo may be required to execute any documents or its legal counsel is asked to provide any legal opinion related to the COP Process, LandCo and its legal counsel shall be provided no less than fourteen (14) days notice and access to, and the opportunity to comment on, all documents prepared for or related to the COP Process.

2.5 Issuance of the COPs

a) The COPs shall issue within forty-five (45) days of the COP Process Start Date.

b) The PFA’s purchase of the USOC Condominium is contingent upon the successful issuance of the COPs and execution of a sublease for the Condominium by the USOC. The PFA shall use its best efforts to complete the COP Process as set forth herein and in Exhibit A to this Agreement. The COP Process shall be subject to the terms of this Agreement.

c) Upon the successful issuance of the COPs by the PFA, \$18,800,000 of the total amount generated shall be placed into an escrow account established by the City. All interest earned on any amount in this escrow account shall be owned by and distributed to the City.

2.6 Sale and Purchase of the USOC Condominium

a) LandCo shall complete the core and shell of the Headquarters Building to the design and specifications on or before September 30, 2009. The core and shell of the Headquarters Building shall be deemed complete when all six (6) criteria listed in Exhibit B have

been satisfied by LandCo. 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 the purchase the USOC Condominium.

b) On or before the date of the PFA's purchase of the USOC Condominium, LandCo shall purchase extended coverage Title Insurance for the USOC Condominium, in an amount equal to the purchase price of \$18,800,000 naming the PFA, the City, and the USOC as additional insured parties.

c) On or before the date of the PFA's purchase of the USOC Condominium, LandCo shall pay to the El Paso County Treasurer all due and owing taxes on the Headquarters Building through the closing date. All taxes related to the USOC Condominium for 2009 and payable in 2010 shall be prorated to the closing date. LandCo's prorated portion of such 2009 taxes shall be paid to the PFA or shall constitute a deduction from the purchase price as otherwise set forth herein, as the Parties may agree in writing.

d) The USOC Condominium shall be transferred to the PFA free and clear of any and all liens or other encumbrances which are reflected in the Title Insurance referred to herein.

e) The PFA shall purchase the USOC Condominium for \$18,800,000 upon the completion of construction of the core and shell of the Headquarters Building by LandCo as defined by Exhibit B, the successful issuance of the COPs and completion of the COP Process and an executed Sublease between the City and the USOC.

f) On or before the PFA purchases the USOC Condominium, LandCo 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.

g) The City shall be responsible for completion of the streetscape adjacent to the Headquarters Building as set forth on Exhibit C. Such work shall not include storm sewer, utility hook-ups or any other service necessary to the proper functioning of the Headquarters Building.

h) Upon the PFA's purchase of the USOC Condominium, LandCo shall release to the City any and all right, title and interest to 240 parking spaces in the Nevada-Colorado Parking Garage which LandCo previously pledged to the USOC.

i) LandCo shall have no responsibility for the cost or construction of any future sky bridge between the Headquarters Building and the Nevada-Colorado Parking Garage.

3. Mutual Releases.

3.1 The Mutual Releases in paragraphs 3.2 and 3.3 shall be effective upon the sale of the USOC Condominium to the PFA, subject to the terms of this Agreement. To the extent that the sale of the USOC Condominium fails to occur pursuant to the terms of this Agreement, the Mutual Releases shall be null and void.

3.2 Subject to paragraph 3.1, LandCo on behalf of itself, and its predecessors, successors, affiliates, assigns, shareholders, heirs, beneficiaries, members, managers, officers, directors, agents, and other representatives hereby completely, unconditionally, and forever release, acquit and discharge the City and the PFA, and the City's and PFA's current and former agents and employees, attorneys, officers, directors, managers, members, shareholders, successors, assigns, heirs and beneficiaries of and from any and all actions, causes of action, claims, counterclaims, debts, demands, liabilities, losses and damages, whether known or unknown, asserted in or relating to the Lawsuit and the transactions to which the Lawsuit relates whether or not explicitly stated in the Lawsuit. Notwithstanding the foregoing, nothing contained in this paragraph 3.2 shall release the City from complying with the terms and conditions of this Agreement.

3.3 Subject to paragraph 3.1, the City and the PFA, their successors, assigns, shareholders, heirs, beneficiaries, members, managers, officers, directors, agents, and other representatives hereby completely, unconditionally, and forever release, acquit and discharge LandCo, and LandCo's current and former affiliates, agents and employees, attorneys, officers, directors, managers, members, shareholders, successors, assigns, heirs and beneficiaries of and from any and all actions, causes of action, claims, counterclaims, debts, demands, liabilities, losses and damages, whether known or unknown, asserted in or relating to the Lawsuit and the transactions to which the Lawsuit relates whether or not explicitly stated in the Lawsuit. Notwithstanding the foregoing, nothing contained in this paragraph 3.3 shall release LandCo from complying with the terms and conditions of this Agreement.

4. Termination of Agreement; Complete Agreement. This Agreement and the contracts contemplated hereunder represent the settlement of a dispute, and as such this Agreement and the contracts specified in this Agreement constitute the entire agreement between the Parties pertaining to the Contract Documents and supersede all prior contracts and/or agreements between LandCo and the City, including, but not limited to, the terminated EDA and the terminated prior Purchase and Sale Agreement. In the event that the obligations under this Agreement or the contracts contemplated hereunder are not met, this paragraph, this Agreement, and all other contracts contemplated herein are null and void, and any dispute will proceed as contemplated in paragraph 1.2.

5. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all Parties. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

6. **Attorneys' Fees.** Each Party shall be responsible for its own attorneys' fees, costs and expenses incurred in connection with the Lawsuit, and the transactions to which the Lawsuit relates whether or not explicitly stated in the Lawsuit, and the preparation of this Agreement and the contracts specified hereunder.

7. **No Admission of Liability.** The Parties' agreement to the terms herein shall in no manner be deemed an admission, express or implied, of: (a) liability by any Party to any other person or entity; (b) any fact, other than the facts set forth in the Preamble to this Agreement; or (c) the merits of the position taken by any Party with respect to any matter.

9. **Effectuation of Agreement.** Each Party shall execute any and all documents and do and perform any and all acts and things necessary or proper to effectuate or further evidence the terms and provisions of this Agreement and the contracts specified hereunder.

10. **No Assignment of Claims.** Each of the Parties represents and warrants to the other that it has not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claims that it might have against the other.

11. **Headings.** All paragraph headings of this Agreement are solely for the convenience of the Parties, and have no binding effect or power.

12. **Non-disparagement.** The Parties agree not to disparage the other Parties hereto, or any employees, officers, directors or agents, past or present, of the Parties, either orally or in writing, subject to the exceptions set forth herein. For example, having settled and resolved their disputes and difference, no Party may accuse another Party of having breached the Contract Documents, aided and abetted a breach of the Contract Documents, breached any fiduciary duty, or violated 42 U.S.C. § 1983.

13. **Venue and Choice of Law.** The interpretation of and performance under this Agreement shall be governed by the laws of Colorado, without reference to or consideration of Colorado's law on choice of law. In the event that there are any disputes relating solely to this Agreement or the agreements specified herein, the parties consent to the exclusive jurisdiction of El Paso County District Court for State claims and the US District Court for the District of Colorado for Federal claims and related State claims.

14. **Review; Representation by Counsel.** Each Party acknowledges and represents that:

a) It has fully and carefully read and considered this Agreement prior to its execution, and the persons executing this Agreement have been duly authorized by the respective Party to do so;

b) It has consulted with or has had the opportunity to consult with its attorneys regarding the legal effect and meaning of this Agreement and all terms and conditions hereof, and that it is fully aware of the contents of this Agreement and its legal effect;

c) It has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Agreement; and

d) It is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind.

15. Miscellaneous Provisions.

a) This Agreement and all contracts specified hereunder only bind the Parties. No term or provision of this Agreement or all contracts contemplated hereunder binds any person or entity that is not a party to this Agreement;

b) This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective heirs, beneficiaries, legal representatives, successors and assigns;

c) Furthermore, this Agreement shall be deemed to have been prepared with the full and equal participation of all Parties and their respective counsel; and

d) This Agreement may be executed in counterparts, each of which shall constitute an original, and both of which together shall constitute one and the same document. The parties will accept facsimile signatures as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided above.

[Signatures appear on the following pages]

LandCo Equity Partners, LLC

By: _____

Print Name: _____

As Its: _____

Date: _____

27 South Tejon Partners, LLC

By: _____

Print Name: _____

As Its: _____

Date: _____

LandCo 27, LLC

By: _____

Print Name: _____

As Its: _____

Date: _____

LandCo 19 North Tejon, LLC

By: _____

Print Name: _____

As Its: _____

Date: _____

City of Colorado Springs, Colorado

By: _____

Print Name: _____

As Its: _____

Date: _____

City of Colorado Springs Public Facilities Authority

By: _____

Print Name: _____

As Its: _____

Date: _____

Approved as to Form:

Patricia K. Kelly
City Attorney/Chief Legal Officer and
Counsel to the City of Colorado Springs Public Facilities Authority