

63
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 14-149

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of April 7, 2014
 (Adoption Date)

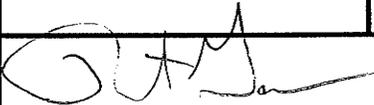
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A 2014 SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF PHILIPPOS T. PHILIPPOU, THE PHILIPPOU GROUP, AND THE CITY OF LAS CRUCES.

PURPOSE(S) OF ACTION:

To settle a claim.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Harry (Pete) Connelly	<u>Department/Section:</u> Legal/City Attorney	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On September 25, 2009, the City of Las Cruces entered into a Settlement Agreement (the "2009 Settlement Agreement") with the Phillipou Group which encompasses various entities owned by Philippos T. Phillipou concerning subdivision requirements. Pursuant to the 2009 Settlement Agreement, the Phillipou Group signed a Promissory Note in the amount of \$1,098,900.00 in favor of the City on October 30, 2009 and agreed to make payments to the City through various real estate lot sales.

Philippos T. Phillipou passed away after the 2009 Settlement Agreement was signed and his estate is now being probated in the Probate Court of Doña Ana County, New Mexico in Cause No. PB-2012-0019.

The City Attorney and the Finance Department have, pursuant to the 2009 Settlement Agreement, kept track of all sales of lots and other properties subject to the 2009 Settlement Agreement.

(Continue on additional sheets as required)

On January 6, 2014, the City Council met in closed session and authorized City Staff to negotiate the 2014 Final Settlement Agreement with the Estate of Philippos T. Philippou and the Philippou Group, subject to City Council approval.

As of March 31, 2014, the Philippou Group has an outstanding balance owing to the City in the Promissory Note of approximately \$503,500.00. Irasema Philippou, as Personal Representative of the Estate of Philippos T. Philippou and as a representative of the Philippou Group, negotiated the 2014 Final Settlement Agreement between the Estate of Philippos T. Philippou, the Philippou Group, and the City in the amount of \$265,000.00 as final payment on the Promissory Note.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", 2014 Final Settlement Agreement.
3. Attachment "A", 2009 Settlement Agreement (without exhibits).

SOURCE OF FUNDING:

N/A	Is this action already budgeted?		
	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
	<input type="checkbox"/>	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 4205-4205-124500 in the amount of \$265,000.00 for FY14.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The settlement funds received will be used to pay off the Promissory Note.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the signing by the City Manager of the 2014 Settlement Agreement between the City, the Estate of Philippos T. Philippou, and the Philippou Group.
2. Vote "No"; this will mean that the Council prohibits the signature of a 2014 Settlement Agreement and the City will not receive a lump sum of money and will continue to receive any monies that were promised in the existing 2009 Settlement Agreement.
3. Vote to "Amend"; this could delay the signing of the 2014 Settlement Agreement and delay incoming money to the City.
4. Vote to "Table"; this will stop the signing of the 2014 Settlement Agreement and the City will continue to receive the monies as outlined in the 2009 Settlement Agreement.

REFERENCE INFORMATION:

The resolutions and/or ordinances listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 14-149**A RESOLUTION APPROVING A 2014 SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF PHILIPPOS T. PHILIPPOU, THE PHILIPPOU GROUP, AND THE CITY OF LAS CRUCES.**

The City Council is informed that:

WHEREAS, on September 25, 2009, the City of Las Cruces entered into a Settlement Agreement (the "2009 Settlement Agreement") with the Phillipou Group which encompasses various entities owned by Philippos T. Phillipou concerning subdivision requirements; and

WHEREAS, pursuant to the 2009 Settlement Agreement, on October 30, 2009 the Phillipou Group signed a Promissory Note in the amount of \$1,098,900.00 in favor of the City and agreed to make payments to the City through various real estate lot sales; and

WHEREAS, Philippos T. Phillipou passed away after the 2009 Settlement Agreement was signed and his estate is now being probated in the Probate Court of Doña Ana County, New Mexico in Cause No. PB-2012-0019; and

WHEREAS, the City Attorney and the Finance Department have, pursuant to the 2009 Settlement Agreement, kept track of all sales of lots and other properties subject to the 2009 Settlement Agreement; and

WHEREAS, on January 6, 2014 the City Council met in closed session and authorized City Staff to negotiate a 2014 Final Settlement Agreement with the Estate of Philippos T. Phillipou and the Phillipou Group, subject to City Council approval; and

WHEREAS, as of March 31, 2014, the Phillipou Group has an outstanding balance owing to the City in the Promissory Note of approximately \$503,500.00; and

WHEREAS, Irasema Phillipou, as Personal Representative of the Estate of Philippos T. Phillipou and as a representative of the Phillipou Group, negotiated the

2014 Final Settlement Agreement between the Estate of Philippos T. Philippou, the Philippou Group, and the City, where the City in the amount of \$265,000.00 as final payment on the Promissory Note.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the 2014 Final Settlement Agreement, attached hereto as Exhibit "A" and incorporated herein, is hereby approved.

(II)

THAT the City Manager is authorized to sign the 2014 Final Settlement Agreement, attached hereto as Exhibit "A" and incorporated herein.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

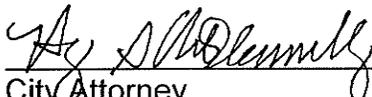
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Levatino: _____

APPROVED AS TO FORM:



City Attorney

FINAL SETTLEMENT AGREEMENT – 2014

This Settlement Agreement (this “**Agreement**”) is made by and between the **CITY OF LAS CRUCES** (the “**City**”), a New Mexico municipal corporation, and **GRECO ENTERPRISES, INC.** (“**Greco**”), a New Mexico corporation, **GRECO RENTALS UNIVERSITY, LLC** (“**Greco Rentals**”), a New Mexico limited liability company, **KATERINA, INC.** (“**Katerina**”), a New Mexico corporation, **KTISIS, INC.** (“**Ktisis**”), a New Mexico corporation, **LOGOS DEVELOPMENT, INC.** (“**Logos**”), a New Mexico corporation, **ORNITHES, INC.** (“**Ornithes**”), a New Mexico corporation, **PHILIPPOU, LLC** (“**Philippou, LLC**”), a New Mexico limited liability company, **IRASEMA PHILIPPOU** as personal representative of the estate of **PHILIPPOS PHILIPPOU**, deceased, who is also known as Philippos T. Philippou and whose estate is being probated in the Probate Court of Doña Ana County, New Mexico as Cause No. PB-2012-0019 (“**Philippou**”), **PRIMERA, LLC** (“**Primera**”), a New Mexico limited liability company, **TERRA FIRMA OF LAS CRUCES, INC.** (“**Terra Firma**”), a New Mexico corporation, **TEX-MEX LAND, INC.** (“**Tex-Mex**”), a New Mexico corporation, and **TIERRA NEGRA, INC.** (“**Tierra Negra**”), a New Mexico corporation (Greco, Greco Rentals, Katerina, Ktisis, Logos, Ornithes, Philippou, LLC, Philippou, Primera, Terra Firma, Tex-Mex and Tierra Negra are sometimes referred to in this Agreement collectively as the “**Philippou Group**”) (the City and the Philippou Group are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”), based on the following facts:

RECITALS

A. On or about July 2, 2009, the City filed a lawsuit against Greco, Katerina, Logos, Philippou, Philippou, LLC, and Tex-Mex with respect to the infrastructure for several subdivisions in the City, including the Mission Espada Subdivision, Phases 1, 2A, and 2B (“**Mission Espada**”). The City entered into a Settlement Agreement with the Philippou Group dated September 25, 2009 (the “**2009 Settlement Agreement**”). As part of that settlement, the Philippou Group agreed to pay the City the sum of \$1,098,900 plus interest from October 30, 2009, at the rate of 4.5528% per annum, by October 30, 2019, which is evidenced by a promissory note (the “**Note**”). In order to partially secure payment of that obligation, Tex-Mex granted the City a second mortgage of Tex-Mex’s lots in Mission Espada. The City’s mortgage provides that it will be released when the City receives \$222,000 from the sale of the lots. The current balance of the Note is approximately \$503,500.

B. On or about June 3, 2010, Tex-Mex sold to **G.L. GREEN & ASSOCIATES, L.L.C.** (“**Green**”), a New Mexico limited liability company, all of Tex-Mex’s remaining lots in Mission Espada. As part of that acquisition, Green agreed to pay the City on behalf of Tex-Mex the sum of \$222,000 plus interest from June 3, 2010 at the rate of 4.5528% per annum, by the earlier of October 30, 2019, or the date that Green ceases to own any of the lots in Mission Espada (“**Green’s Obligation**”). The current balance of Green’s Obligation is approximately \$260,000.

C. Green claims that, pursuant to the 2009 Settlement Agreement, the City is responsible for building all the retaining walls as shown on the subdivision plats of Mission Espada. Green claims that it has spent over \$260,000 to construct those walls. The City denies that Green is a third party beneficiary to the 2009 Settlement Agreement and that the City has any responsibility to reimburse or compensate Green for any action he may have undertaken with respect to the Mission Espada subdivision.

D. Based on Green's offer to not pursue its claim against the City if Tex-Mex released Green from Green's Obligation, the Philippou Group offered to pay the City \$265,000.00 if the City will take it in full payment of the Note.

E. The City is willing to accept the Philippou Group's offer, but on the conditions that the Philippou Group release the City from any claim that the Philippou Group may now or hereafter have against the City with respect to the 2009 Settlement Agreement and that the Philippou Group indemnify and save the City harmless from any claim that Green hereafter makes that the City is obligated to build at its expense any retaining wall in Mission Espada pursuant to the 2009 Settlement Agreement. The Philippou Group is willing to do so based on Green's agreement not to pursue its claim against the City and the City's representation that it has performed all of its obligations under the 2009 Settlement Agreement.

AGREEMENTS

Based on the foregoing, and in consideration of the mutual agreements, representations, warranties, covenants and conditions contained this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. If the City Council for the City approves this Agreement, then, within 30 days thereafter, the Philippou Group shall pay the City \$265,000.00 (the "**Payment**"), which the City shall accept in full payment of the Note.

2. Within 10 days after the City receives the Payment, the City shall deliver to the Philippou Group an executed and acknowledged release of the mortgage that is dated October 30, 2009, that certain members of the Philippou Group granted to the City to secure the Note, and that was recorded in the real property records in the office of the County Clerk of Doña Ana County, New Mexico on November 6, 2009, as instrument number 0930632 (the "**Mortgage**").

3. If the City Council for the City approves this Agreement, then (a) the City hereby releases the Philippou Group and any other entity or individual who agreed to pay any part of the Note from their obligations to pay the debt evidenced by the Note and to comply with their other covenants in the Note, the Mortgage, and the 2009 Settlement Agreement; (b) the Philippou Group hereby releases the City from any claim that it may now or hereafter have against the City

with respect to the 2009 Settlement Agreement; (c) neither the City nor the Philippou Group shall have any surviving claims or cause of action against the other or any other entity or individual arising out of or in connection with the Note, the Mortgage, or the 2009 Settlement Agreement; and (c) the City and the Philippou Group shall not seek any recovery under or in connection with the Note, the Mortgage, or the 2009 Settlement Agreement.

4. If the City Council for the City approves this Agreement, then the Philippou Group will indemnify and save the City harmless from and against all costs, including reasonable attorneys' fees and expenses, that the City may hereafter incur as a result of any claim that Green hereafter makes that the City is obligated to build at its expense any retaining wall in the Mission Espada pursuant to the 2009 Settlement Agreement.

5. In the event any Party fails to adhere to the terms of this Agreement, and any other Party shall be required to file suit in order to enforce the terms of this Agreement, then the non-breaching Party shall be entitled to recover in addition to such damages as they may be entitled in law or in equity, attorneys' fees and costs resulting from the other Party's failure to adhere to the terms of this Agreement.

6. This Agreement is binding on and inures to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

7. This Agreement is solely for the benefit of the City and the Philippou Group, and, specifically, there is no third party beneficiary status that can be asserted by another party as a result of this Agreement between the City and the Philippou Group.

8. This Agreement contains the entire agreement among the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior agreements, arrangements or understandings among the Parties with respect to the Note and the Mortgage. This Agreement is not subject to any modification, waiver or addition that is made orally but is subject to modification, waiver or addition only by means of a writing signed by the Parties.

9. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signature of each of the Parties to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Agreement and read as having the same force and effect as though all of the signatories had signed a single page. Further, delivery of an executed copy of this Agreement by facsimile, e-mail or otherwise shall have the same force and effect as delivery of an executed original.

10. Irasema Philippou represents and warrants to the City that she has the authority to sign and deliver this Agreement to the City on behalf of Greco, Greco Rentals, Katerina, Ktisis, Logos, Ornithes, Philippou, LLC, Primera, Terra Firma, Tex-Mex, Tierra Negra, and the estate

of Philippos Philippou, and that she has the power and authority to bind each such entity or estate to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates specified below.

CITY OF LAS CRUCES

By: _____
Robert Garza, P.E.
City Manager

Dated: March ____, 2014

Approved as to Form:

Harry S. (Pete) Connelly
City Attorney

GRECO ENTERPRISES, INC., a
New Mexico corporation

KATERINA, INC., a New Mexico
corporation

By: _____
Irasema Philippou, President

By: _____
Irasema Philippou, President

Dated: March ____, 2014

Dated: March ____, 2014

GRECO RENTALS UNIVERSITY, LLC, a
New Mexico limited liability company

KTISIS, INC., a New Mexico corporation

By: _____
Irasema Philippou, Manager

By: _____
Irasema Philippou, President

Dated: March ____, 2014

Dated: March ____, 2014

LOGOS DEVELOPMENT, INC., a
New Mexico corporation

By: _____
Irasema Philippou, President

Dated: March ____, 2014

TERRA FIRMA OF LAS CRUCES INC., a
New Mexico corporation

By: _____
Irasema Philippou, President

Dated: March ____, 2014

ORNITHES, INC., a New Mexico
corporation

By: _____
Irasema Philippou, President

Dated: March ____, 2014

TEX-MEX LAND, INC., a New Mexico
corporation

By: _____
Irasema Philippou, President

Dated: March ____, 2014

PHILIPPOU, LLC, a New Mexico limited
liability company

By: _____
Irasema Philippou, Manager

Dated: March ____, 2014

TIERRA NEGRA, INC., a New Mexico
corporation

By: _____
Irasema Philippou, President

Dated: March ____, 2014

IRASEMA PHILIPPOU as personal
representative of the estate of Philippos
Philippou, deceased

Dated: March ____, 2014

PRIMERA, LLC, a New Mexico limited
liability company

By: _____
Irasema Philippou, Manager

Dated: March ____, 2014

SETTLEMENT AGREEMENT

This Settlement Agreement (this "**Agreement**") is entered into by and among **CITY OF LAS CRUCES** (the "**City**"), a New Mexico municipal corporation, **GRECO ENTERPRISES, INC.** ("**Greco**"), a New Mexico corporation, **GRECO RENTALS UNIVERSITY, LLC** ("**Greco Rentals**"), a New Mexico limited liability company, **KATERINA, INC.** ("**Katerina**"), a New Mexico corporation, **KTISIS, INC.** ("**Ktisis**"), a New Mexico corporation, **LOGOS DEVELOPMENT, INC.** ("**Logos**"), a New Mexico corporation, **ORNITHES, INC.** ("**Ornithes**"), a New Mexico corporation, **PHILIPPOU, LLC** ("**Philippou, LLC**"), a New Mexico limited liability company, **PHILIPPOS T. PHILIPPOU** ("**Philippou**"), an individual, **PRIMERA, LLC** ("**Primera**"), a New Mexico limited liability company, **TERRA FIRMA OF LAS CRUCES, INC.** ("**Terra Firma**"), a New Mexico corporation, **TEX-MEX LAND, INC.** ("**Tex-Mex**"), a New Mexico corporation, and **TIERRA NEGRA, INC.** ("**Tierra Negra**"), a New Mexico corporation (Greco, Greco Rentals, Katerina, Ktisis, Logos, Ornithes, Philippou, LLC, Philippou, Primera, Terra Firma, Tex-Mex and Tierra Negra are sometimes referred to in this Agreement collectively as the "**Philippou Group**") (the City and the Philippou Group are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**"), based on the following facts:

RECITALS

A. Certain members of the Philippou Group are the developers of several subdivisions located within the City of Las Cruces, which subdivisions are named Dos Sueños Estates, El Presidio Phases 1, 2, 3A, 3B, 4A and 4B, Entrada de Sierra Subdivision Phase 1, Los Enamorados Estates, Mission Espada Subdivision Phases 1, 2A and 2B, Mission Nuevo, Mission Santa Clara, Monte Sombra and Sierra Norte Heights, Phase 1 (said subdivisions are sometimes referred to in this Agreement collectively as the "**Subdivisions**").

B. The City has asserted claims against certain members of the Philippou Group with respect to eight of the Subdivisions in a complaint it filed in the Third Judicial District Court (the "**Court**"), in Doña Ana County, New Mexico, which case is identified by the Court as Cause No. CV-2009-01738 (the "**Litigation**").

C. The Parties have reached an agreement to settle the Litigation, and have agreed by mutual compromise to finally resolve all claims and disputes therein, and related thereto, and herein set forth the terms of that settlement agreement.

AGREEMENTS

Based on the foregoing, and in consideration of the mutual agreements, representations, warranties, covenants and conditions contained this Agreement, and for other good and valuable

consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Philippou Group's Obligations.** At the Closing (defined below), the Philippou Group shall do the following:

(a) Katerina shall convey to the City its real property in Clark County, Nevada that is a portion of commercial lot 2 of Longford at Lake Mead, which is further described in **Exhibit A** attached hereto and incorporated herein. ~~The conveyance shall be made by a warranty deed,~~ subject only to reservations, restrictions, covenants and easements of record at the time of such conveyance, and prorated property taxes for the current year. The Philippou Group shall pay the cost of recording the deed. The Philippou Group shall provide, at its expense, an owner's policy of title insurance issued to the City by First American Title Insurance Company with respect to said property in the amount of \$425,000.00, subject only to reservations, restrictions, covenants and easements of record, property taxes for the current year and the standard printed exceptions.

(b) Katerina shall convey to the City its surface water rights with respect to 141 acres of the land identified by the Elephant Butte Irrigation District as Parcel Nos. 1082.200 and 88130, and shall obtain EBID's consent to the transfer of those water rights to the land owned by the City that is commonly known as the Santa Tomas Farm.

(c) The Philippou Group shall obtain from the New Mexico State Land Office a right-of-way that will allow the City to use the proposed extension of Mesa Grande Avenue from Oñate High School to Lohman Avenue for at least 30 years.

(d) The Philippou Group shall provide to the City its engineering plans for the Subdivisions.

(e) The Philippou Group shall give the City a promissory note for \$1,098,900.00 that is payable within 10 years, that bears interest at an annual rate that is one percentage point higher than the City's cost of borrowing from the New Mexico Finance Authority, and which promissory note shall be secured by a second mortgage on all of the lots that the Philippou Group owns in the Subdivisions, excluding Lots 12 and 14 in Block C of Mission Espada, upon which houses have been built as of September 30, 2009, and on the following described properties:

(1) The approximately 263 acres of land south of the City in Doña Ana County, New Mexico in Sections 24, 25 and 30, Township 24 South, Range 2 East of the N.M.P.M. of the U.S.R.S. Surveys, that is further described in **Exhibit B** attached hereto and incorporated herein; and

(2) The ground water rights with respect to approximately 91 acres of land in the Lower Rio Grande Basin, which land is further described in **Exhibit C** attached hereto and incorporated herein.

The Philippou Group shall pay the cost of recording the second mortgage. The second mortgage shall provide that the City shall partially release from its mortgage any part of the mortgaged property sold by the Philippou Group, provided that the City receives 75% of the proceeds from said sale remaining after payment of all selling and closing costs incurred in connection with said sale, property taxes, and all superior liens and encumbrances. ~~The City acknowledges that it will be obligated from time to time to partially release from its mortgage one or more parts of the mortgaged property sold by the Philippou Group even though the City receives nothing from said sale because all of the proceeds from said sale remaining after payment of property taxes and all selling and closing costs incurred in connection with said sale, are paid to the holders of superior liens and/or encumbrances.~~ The second mortgage shall also provide that the City shall partially release from its mortgage all lots in a Subdivision after the City has received from the sale of lots in that Subdivision the amount specified below for that Subdivision:

<u>Subdivision</u>	<u>Release Amount</u>
Entrada de Sierra	\$141,000.00
Mission Espada	\$222,000.00
Mission Santa Clara	\$154,000.00
Monte Sombra	\$308,000.00
Sierra Norte Heights	\$279,000.00

The Philippou Group shall provide to the City, at the Philippou Group's expense, a mortgagee's policy of title insurance issued by First American Title Insurance Company with respect to the mortgaged property in the amount of the promissory note, subject only to reservations, restrictions, covenants, encumbrances and easements of record, property taxes for the current year and the standard printed exceptions.

(f) No member of the Philippou Group shall submit to the City for its approval any new major residential subdivision until the promissory note is paid in full.

2. City's Obligations.

(a) At the Closing, the City shall accept the dedication of the streets, water, gas, and sewer lines, drainage structures and other improvements in the Subdivisions contemplated by

the plats of the Subdivisions and shall thereafter be responsible for maintaining and repairing them at its expense.

(b) Immediately after the Closing, the City shall release any restriction that it has placed on the issuance of building permits or certificates of occupancy for houses in the Subdivisions due to work that the City claimed that the Philippou Group had not finished in or for the Subdivisions. The City shall notify the public and the owners of lots in the Subdivisions that the City is responsible for completing all work that it claimed the Philippou Group had not completed with respect to the Subdivisions. The City shall, within 30 days after the Closing Date (defined below), commence the installation of the street lights in the Subdivisions that require said installation and shall promptly thereafter complete the installation of said street lights.

(c) At the Closing, the City shall convey to the Philippou Group the "stacked water rights" that were appurtenant to the land described in **Exhibit D** attached hereto and incorporated herein, and that were conveyed by Philippou, LLC to the City pursuant to the warranty deed dated August 6, 2009, that was recorded in the real property records in the office of the County Clerk of Doña Ana County, New Mexico on August 7, 2009, as Instrument No. 0922165, and shall cooperate with the Philippou Group in obtaining EBID's consent to the transfer of those water rights to other land.

3. **Closing.** Except as otherwise mutually agreed upon by the Parties, this Agreement shall close (the "**Closing**") on October 30, 2009, unless the Philippou Group elects to close prior to then, in which case the Closing shall occur five (5) days after the Philippou Group notifies the City and Doña Ana Title Company, Inc., a New Mexico corporation (the "**Title Company**"), that the Philippou Group is ready, willing and able to close (the "**Closing Date**"), and shall be held at the main office of the Title Company in the City during regular business hours on the Closing Date, or at such other place or time as the parties may mutually agree. All necessary documents shall be executed and all required monies in the form of certified or ready funds shall be delivered to the Title Company at the Closing.

4. **Mutual Release.** Except for the obligations under this Agreement, the Parties do each hereby forever release, discharge and acquit the other Parties, their affiliated entities, firms, corporations (including their parent, subsidiary, successor and predecessor companies) as well as related partnerships, joint ventures and the like, as well as their agents, servants, directors, officers, members, employees, shareholders, executors, administrators, insurers, attorneys and representatives, from any and all claims, actions, causes of action, suits, demands, covenants, contracts, or promises of every nature, character and description, known or unknown, relating in any way to the claims that are, or could have been, asserted by any Party against any other Party and that have arisen or that may arise in the future, directly or indirectly, from the Subdivisions and the Litigation.

5. No Admission of Liability. Except as specifically provided in this Agreement, this Agreement shall never be treated by any person or entity as an admission or evidence of liability at any time for any purpose, all liability being expressly denied.

6. Warranties and Representations.

(a) Each Party warrants and represents to the other Parties that it has not assigned, transferred, or conveyed to anyone any claim, debt, demand, liability, account, obligation, or cause of action that it may have against all or any of the other Parties with respect to the Subdivisions.

(b) In executing this Agreement, the Parties warrant, understand, and represent that they have relied wholly upon their own independent and individual judgment or upon the judgment of one or more attorneys and/or agents in their employ, that they have not been influenced to any extent whatsoever by any representation or statements by the other Parties, their agents, or attorneys, and that no promise, claim, or inducement of any kind not herein expressed has been provided.

(c) The Parties understand and agree that the terms of this Agreement are contractual and not mere recitations, and the Parties further understand and agree that this Agreement is fully integrated and constitutes the entire agreement by and among the Parties, and that all representations are deemed merged herein. It is further understood and agreed that the covenants and obligations of this Agreement are non-severable, except where expressly stated in this Agreement.

(d) Each Party assumes the risk of any mistake of fact, whether past, present, existing, or which may arise in the future, as to the extent of any injuries, damages, losses, costs, or expenses which they may have incurred or may yet incur as a result of any of the matters contained herein, even if such injuries, damages, losses, costs, or expenses have not previously been disclosed to or discovered by the Parties. Each Party assumes the risk that any damages that may be sustained by such Party by virtue of the claims asserted by such Party against any other Party may be greater than now presently realized, that the damages may increase in amount or in severity, or that there may be unknown and unknowable damages.

(e) The Parties warrant and represent to each other that they have carefully and fully read this Agreement and that they have the authority and the legal capacity to enter into this Agreement, and that they know the contents hereof, and that they have signed the same of their own free act and deed.

(f) The City warrants to the Philippou Group that the City's security for the promissory note is a second mortgage and that it understands that if the any of the first mortgages

on the Subdivisions are placed in litigation, the City's position is that of a second mortgagee in said litigation.

7. Entire Agreement; Binding Effect. This Agreement constitutes the entire understanding and agreement of the Parties and shall be binding upon and inure to the benefit of all of the Parties and their respective assigns, successors-in-interest, and legal representatives, and shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. The Parties agree that jurisdiction and venue of any dispute as to this Agreement shall lie in Doña Ana County, New Mexico.

8. Recovery of Costs of Enforcement. In the event legal action is commenced to enforce or interpret, or for breach of, any provision of this Agreement, the prevailing Party shall be entitled to recover from the losing Party costs and expenses incurred, including, but not limited to, reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing Party may be entitled.

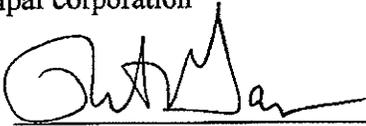
9. Counterparts and Fax Signatures. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signature of each of the Parties to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Agreement and read having the same force and effect as though all of the signatories had signed a single page. Further, the execution and delivery of this Agreement may be effectuated by the use of fax transmission and the facsimile signature created thereby shall be considered an original signature.

10. Dismissal of Litigation. The Litigation, and all claims therein, shall be dismissed with prejudice with regard to all claims asserted by the City against any or all members of the Philippou Group. Within ten (10) days after the Closing Date, the Parties shall cause their counsel to execute and file with the Court a Stipulation of Dismissal of the Litigation with prejudice. Copies of the filed Stipulation of Dismissal shall be distributed to all counsel upon filing with the Court. Within two (2) days after the Stipulation of Dismissal is filed with the Court, the City shall record in the office of the County Clerk of Doña Ana County, New Mexico a release of the Notice of Lis Pendens that was recorded by it in the office of the County Clerk of Doña Ana County, New Mexico on July 2, 2009 as Instrument No. 0918427.

11. Third Party Beneficiaries. This Agreement is solely for the benefit of the City and the Philippou Group, and no other individual or entity is to be benefitted by the same, and, specifically, there is no third party beneficiary status that can be asserted as a result of this Agreement between the City and the Philippou Group.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates specified below.

CITY OF LAS CRUCES, a New Mexico municipal corporation

By: 

Name: Robert Garza

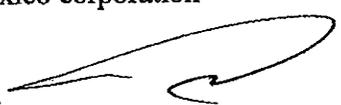
Title: Assistant City Manager

Dated: September 25th, 2009

Approved as to form:

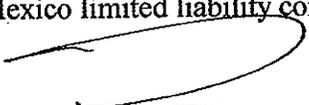

City Attorney

GRECO ENTERPRISES, INC., a New Mexico corporation

By: 
Philippos T. Philippou, President

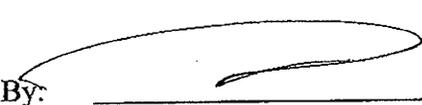
Dated: September 25, 2009

GRECO RENTALS UNIVERSITY, LLC, a New Mexico limited liability company

By: 
Philippos T. Philippou, Manager

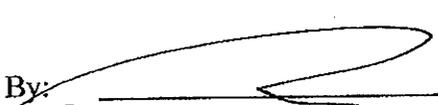
Dated: September 25, 2009

KATERINA, INC., a New Mexico corporation

By: 
Philippos T. Philippou, President

Dated: September 25, 2009

KTISIS, INC., a New Mexico corporation

By: 
Philippos T. Philippou, President

Dated: September 25, 2009

LOGOS DEVELOPMENT, INC., a New Mexico corporation

By: 
Philippos T. Philippou, President

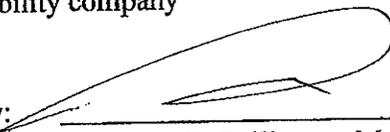
Dated: September 25, 2009

ORNITHES, INC., a New Mexico corporation

By: 
Philippos T. Philippou, President

Dated: September 25, 2009

PHILIPPOU, LLC, a New Mexico limited liability company

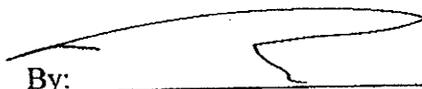
By: 
Philippos T. Philippou, Manager

Dated: September 25, 2009


PHILIPPOS T. PHILIPPOU, Individually

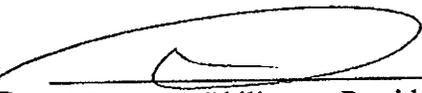
Dated: September 25, 2009

PRIMERA, LLC, a New Mexico limited liability company

By: 
Philippos T. Philippou, Manager

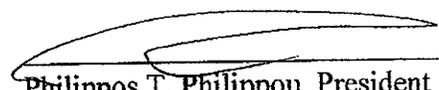
Dated: September 25, 2009

TERRA FIRMA OF LAS CRUCES INC., a
New Mexico corporation

By: 
Philippos T. Philippou, President

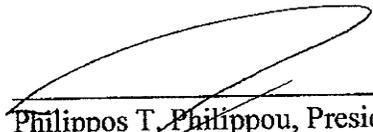
Dated: September 25, 2009

TEX-MEX LAND, INC., a New Mexico
corporation

By: 
Philippos T. Philippou, President

Dated: September 25, 2009

TIERRA NEGRA, INC., a New Mexico
corporation

By: 
Philippos T. Philippou, President

Dated: September 25, 2009