

RESOLUTION NO. 2009-154-UR

A RESOLUTION APPROVING AND AUTHORIZING THE RELEASE AND SETTLEMENT AGREEMENT BY AND BETWEEN THE BROOMFIELD URBAN RENEWAL AUTHORITY AND COLORADO TIER HOCKEY ASSOCIATION

BE IT RESOLVED BY THE BROOMFIELD URBAN RENEWAL AUTHORITY:

Section 1. The Release and Settlement Agreement attached hereto by and between the Broomfield Urban Renewal Authority, a body corporate and politic of the State of Colorado, and Colorado Tier Hockey Association, a Colorado non-profit corporation is hereby approved.

Section 2. The chair or vice chair of the Broomfield Urban Renewal Authority is authorized to sign and the secretary to attest the Intergovernmental Agreement in a form approved by the city & county attorney.

Section 3. This resolution is effective upon its approval by the Broomfield Urban Renewal Authority.

APPROVED on August 25, 2009.



ATTEST:

Lucia Kegeness
Secretary

BROOMFIELD URBAN RENEWAL
AUTHORITY

[Signature]
Chair

APPROVED AS TO FORM:

William A. Justice
City & County Attorney

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("this Agreement") is made this 25th day of August, 2009 between Broomfield Urban Renewal Authority, a body corporate and politic of the State of Colorado ("BURA"), and Colorado Tier Hockey Association, a Colorado non-profit organization ("CTHA") acting through their authorized representatives, and provided that BURA and CTHA may be individually referred to herein as a "Party" and together may be referred to as the "Parties."

WHEREAS, BURA owns the Broomfield Event Center located at 11450 Broomfield Lane, Broomfield, Colorado ("Event Center"); and

WHEREAS, the current operator of the Event Center is Broomfield Sports and Entertainment ("BSE") and BSE is solely responsible for managing and operating the Broomfield Event Center per the terms of an Operations Agreement between BURA and BSE; and

WHEREAS, BSE notified BURA by a letter dated January 13, 2009 that it no longer desires to manage and operate the Broomfield Event Center; and

WHEREAS, on April 2, 2009, BSE entered into a purported Facility Use Agreement with CTHA for the use of the Broomfield Event Center in 2009 and 2010 ("Facility Use Agreement"); and

WHEREAS, BSE by a letter dated July 27, 2009 ("Termination Letter") terminated the Facility Use Agreement; and

WHEREAS, the parties wish to avoid the uncertainties and further expense of litigation and to settle and compromise, on the terms set forth herein below, any and all claims that might be asserted in any litigation or any claim otherwise arising from or relating to the Facility Use Agreement or its termination; and

WHEREAS, the parties acknowledge that the promises and covenants contained herein are good and valuable consideration for all parties' execution of this Agreement;

NOW, THEREFORE, in consideration of the foregoing promises, the parties hereby agree and covenant as follows:

1. Termination of Facility Use Agreement. Subject to the Termination Obligations set forth in Section 2 of this Agreement, the Facility Use Agreement shall be terminated on the Effective Date, subject to BURA and CTHA meeting all of the conditions set forth in this Agreement and subject to the execution of a New Agreement by BURA and a new operator of the Event Center ("New Operations Agreement"). If BURA

does not approve and execute a New Operations Agreement on or before August 26, 2009, than this Agreement shall be void and of no force or effect. Upon the termination of the Facility Use Agreement as set forth in this Section 1, BURA, CTHA, and BSE shall have no further rights or obligations under the Facility Use Agreement except as set forth in Section 2 of this Agreement. If at any time BURA or CTHA violate any of the terms and conditions of this Agreement, the non-defaulting Parties shall have all the legal rights and enforcement authorities, including such authorities granted to it under this Agreement and the Facility Use Agreement.

2. Termination Obligations.

2.1 **Monetary Consideration.** BURA shall pay to CTHA the total sum of One Thousand Dollars and no Cents (\$1000.00) ("Settlement Payment").

2.2 **Release.** CTHA and its directors, member, employees, counsel, heirs, successors, assigns, agents, and representatives, including legal representatives, hereby expressly release, acquit, and forever discharge everyone and every entity, including, but not limited to the Broomfield Urban Renewal Authority, the City and County of Broomfield, Broomfield Sports and Entertainment, LLC, all entities responding to BURA's 2009 Request for Proposals to operate the Event Center, and any new operator of the Event Center, and for all released entities their departments, agencies, and instrumentalities, their officers and employees, agents and successors, and their heirs, successors, assigns, agents and representatives, including legal representatives, from any and all claims, demands, causes of action, and obligations whether asserted or unasserted, whether matured, unmatured or wholly inchoate, whether known or unknown, including but not limited to, any and all claims for breach of any duty or obligation set forth in the Facility Use Agreement, leasehold interest or personalty, and deprivation of property interests based upon any theory of liability, including statutory, constitutional, common law, or equitable, arising from or related to the Facility Use Agreement and any actions or obligations by everyone and every entity related to the Facility Use Agreement, including, but not limited to the Broomfield Urban Renewal Authority, the City and County of Broomfield, Broomfield Sports and Entertainment, LLC, all entities responding to BURA's 2009 Request for Proposals to operate the Event Center, and any new operator of the Event Center.

2.3 **Statements of Contentment and Good Will.** The Parties agree, for themselves and their employees, board members, elected officials, officers, members, agents, and representatives that they are satisfied with the resolution of the issues and difficulties that have arisen out of the Facility Use Agreement or its termination, that they are content with the outcome as set forth in this Agreement, and that they have no intention to, and will not, disparage anyone or any organization with regard to any issues surrounding the Facility Use Agreement, its termination, or this Agreement. The Parties hereby express their

mutual good will toward each other, and in that spirit of cooperation and good will agree to issue a mutually acceptable press release to explain the arrangements represented by this Agreement.

2.4 **Effective Date.** As referred to in this Agreement, the Effective Date is the later of (i) approval of this Agreement by BURA and CTHA, and (ii) execution by BURA of a New Operations Agreement. If either of the conditions set forth in the sub-section (i) and (ii) of this Section 2.4 have not been satisfied on or before August 26, 2009, either party may terminate this Agreement by giving written notice to the other and this Agreement will be of no further force or effect.

3. INTENDED THIRD-PARTY BENEFICIARIES. The Parties agree and acknowledge that the City and County of Broomfield, Broomfield Sports and Entertainment, LLC, all entities responding to BURA's 2009 Request for Proposals to operate the Event Center, and any new operator of the Event Center, and their respective current and former officers and employees, are intended third-party beneficiaries of this Release and Settlement Agreement, and each and all of them shall have the right to rely upon and enforce this Release and Settlement Agreement in any court of competent jurisdiction in the event that any action or proceeding based on claims or causes of action released hereby may be threatened or commenced.

4. NO ADMISSION OF LIABILITY. This Release and Settlement Agreement is entered into only for the purpose of avoiding litigation and does not constitute an admission of liability or evidence of any wrongdoing or omission of any kind. This Release and Settlement Agreement shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove or enforce its terms.

5. REPORTING AND TAX TREATMENT OF SETTLEMENT PAYMENT. It is expressly intended and understood that the Settlement Payment set forth in this Agreement represents settlement of all CTHA's claims concerning the Facility Use Agreement and is not wages. Notwithstanding such intent and understanding, CTHA agrees that BURA may file such tax forms and reports reflecting the Settlement Payment that it deems necessary or appropriate, including but not limited to a form 1099, with taxing authorities. In the event any part of the Settlement Payment is determined to be taxable, CTHA will be solely responsible for any tax liability arising therefrom, including any interest or penalty assessed. In the event that any claim is ever asserted against BURA to satisfy a tax liability arising from CTHA's failure to pay any tax owed on the Settlement Payment, CTHA agrees to defend, indemnify, and hold BURA harmless on such claim, including any interest or penalties, within 30 days after notification from BURA that a taxing authority has asserted a tax claim, or such longer period as specified by the taxing authority. CTHA agrees that neither BURA or its attorney have made any representations or given any legal opinion concerning the tax

treatment of the Settlement Payment, and CTHA is expressly not relying on any such representation or opinion. CTHA has sought and received such tax opinions and advice as he deems necessary from attorneys and/or tax advisors of his choice.

6. WARRANTIES AND REPRESENTATIONS. CTHA represents and warrants that it has not assigned or transferred any claim arising from or related to the Facility Use Agreement to any third party and that no third party has been subrogated to any interest in the claims purported to be released hereby. CTHA agrees to defend and indemnify BURA and its agents, officers, and employees, and to hold them harmless against the claims of any assignee or subrogee to claims purported to be released hereby that may hereafter be asserted.

7. INTEGRATION. This Release and Settlement Agreement constitutes the entire agreement of the parties regarding the subject matter hereof. The terms of this Release and Settlement Agreement are contractual in nature and not mere recitals. As such, the parties understand, acknowledge and agree that this Release and Settlement Agreement is fully integrated and supersedes all previous oral or written agreements of the parties.

8. BINDING EFFECT. This Release and Settlement Agreement shall inure to the benefit of, and be binding upon, the heirs, successors, and assignees and legal representatives of the parties and any third party beneficiaries.

9. GOVERNING LAW. This Release and Settlement Agreement is entered into in Colorado and shall be governed by the laws of the State of Colorado.

10. COSTS AND ATTORNEY'S FEES. The parties agree that they shall bear their own costs and attorney's fees, if any.

11. ADVICE OF COUNSEL. CTHA represents that (a) it has relied upon the advice of attorneys and/or other consultants of its own choice concerning the legal and federal, state and local tax consequences of this Release and Settlement Agreement, (b) this Release and Settlement Agreement has been thoroughly read by CTHA and its terms have been explained by an attorney or attorneys of its choice, and (c) the terms of this Release and Settlement Agreement, including its release of unasserted and unknown claims, are fully understood and voluntarily accepted by CTHA. CTHA further understands and agrees that this Release and Settlement Agreement shall be forever binding and that no cancellation, rescission, or modification of, or release from the terms of, this Release and Settlement Agreement shall be made based upon any mistake of fact or law.

12. EXECUTION IN COUNTERPARTS. This Release and Settlement Agreement may be executed in counterparts, each of which shall have full force

