



# City of La Quinta

**CITY / SA/ HA/ FA MEETING DATE:** November 4, 2014

**AGENDA CATEGORY:**

**ITEM TITLE:** APPROVE SETTLEMENT AGREEMENT AND RELEASE BETWEEN SAVE OUR LA QUINTA NEIGHBORHOOD, THE CITY OF LA QUINTA AND LQR PROPERTY, LLC AND ACCEPT SURRENDER OF ENTITLEMENTS FOR SIGNATURE POOL PROJECT AT LA QUINTA RESORT HOTEL

**BUSINESS SESSION:**

**CONSENT CALENDAR:** 4

**STUDY SESSION:**

**PUBLIC HEARING:**

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## **RECOMMENDED ACTIONS:**

- 1) Approve the attached Settlement Agreement and Release between Save Our La Quinta Neighborhood, the City of La Quinta and LQR Property, LLC, and authorize the City Manager to execute the agreement on behalf of the City; and
- 2) Accept the surrender of entitlements submitted by LQR Property, LLC, for the Signature Pool Project at La Quinta Resort Hotel.

## **EXECUTIVE SUMMARY:**

- In 2007, the City approved a Signature Pool project at the La Quinta Resort ("Resort").
- Save Our La Quinta Neighborhood ("SOLQN") filed a California Environmental Quality Act ("CEQA") challenge to the project, and litigation ensued in Superior Court.
- The City and owners of the Resort prevailed at trial, but SOLQN challenged the approval and filed an appeal.
- The Resort has since decided not to go forward with the signature pool and the settlement agreement (Attachment 1) terminates the litigation.

## **FISCAL IMPACT:**

None. The City's defense in the challenge has been paid for by the Resort.

## **BACKGROUND/ANALYSIS:**

LQR Property, LLC is the owner of the Resort and is the successor in interest to CNL Desert Resort, L.P ("CNL"). In 2006, CNL applied for permits to construct a

“signature pool” at the Resort. In 2007, the City approved the project and issued Site Development and Conditional Use Permits (the “Entitlements”). SOLQN filed a CEQA challenge. The City and CNL prevailed in the Superior Court. SOLQN appealed. However, due to the CNL’s bankruptcy the appeal was stayed. Subsequently, LQR determined that it does not wish to construct the signature pool. The attorneys for all parties agreed upon the settlement agreement and SOLQN and LQR have executed the settlement agreement. LQR is required to surrender the Entitlements (see Attachment 2), and the City, by taking the recommended actions, is accepting the surrender of the Entitlements. The agreement will fully and finally settle the litigation.

**ALTERNATIVES:**

No alternative actions are recommended.

Report prepared by: M. Katherine Jenson, Rutan & Tucker, LLP,  
Assistant City Attorney

Attachments:    1. Settlement Agreement General Release  
                      2. Letter from LQR Property, LLC surrendering entitlements

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter referred to as the "Agreement") is made and entered into this \_\_\_ day of October, 2014 by and between SAVE OUR LA QUINTA NEIGHBORHOOD ("SOLQN"), CITY OF LA QUINTA (the "City") and LQR Property, LLC, ("LQR") as successor-in-interest to CNL DESERT RESORT, L.P. ("CNL"). SOLQN, the CITY and LQR may sometimes be referred to as "the Parties" in the Agreement.

The Agreement is made in reference to the following facts:

### 1. Background.

LQR is the owner of the La Quinta Resort Hotel located in the City of La Quinta. CNL submitted plans to the City for the construction of a signature pool project at the resort (the "Project"). The City approved the Environmental Assessment 2006-573/Addendum to the EIR ("Addendum"), the Project and issued Site Development Permit 2006-865 and Conditional Use Permit 2007-102 (the "Entitlements").

- a. SOLQN is an unincorporated association consisting of persons who opposed the Project.
- b. On or about April 11, 2007, SOLQN filed a CEQA challenge to the Project in its Petition for Writ of Mandate against the City in the Superior Court for the County of Riverside, Desert Judicial District, State of California under case number INC 066377, entitled *Save Our La Quinta Neighborhood v. City of La Quinta*. The complaint is referred to herein as the "Civil Action".
- c. A Judgment denying the Petition for Writ of Mandate was issued on October 23, 2007.
- d. SOLQN filed a Notice of Appeal with the Court of Appeal of the State of California - Fourth Appellate District - Division Two, under Case No. E044813 (the "Appellate Action");
- e. CNL was named a Real Party in Interest in both the Civil Action and the Appellate Action. Thereafter, LQR became the successor-in-interest to CNL.

The Parties desire to resolve and settle all present and past controversies, claims, causes of action or purported causes of action, differences or disputes, both real and potential, arising out of the Project and/or the Entitlements.

### 2. Settlement.

LQR agrees to surrender the Entitlements for the Project such that the Project, as approved, shall not be constructed. In the event LQR decides to pursue a project that would require government approvals, it shall do so without reliance upon the Addendum prepared for the Project.

The City, in its sole discretion, shall determine whether to accept the above mentioned surrender of the Entitlements as part of this settlement. LQR shall promptly apply for such approval of the surrender of the Entitlements. This settlement is conditioned on the City's approval of the surrender of the Entitlements.

**3. No Admission of Liability.**

This Agreement is in compromise of disputed claims and shall not be deemed an admission of liability; such liability is expressly denied by the Parties.

**4. Dismissal.**

Upon execution of this Agreement and within 10 business days after the City Council of the City approves this settlement and the City's approval of the surrender of the Entitlements, the SOLQN shall file a Notice of Settlement and a request that the Appellate Action shall be dismissed. The Parties represent and warrant that each has not filed or initiated any action or proceeding of any kind against the other except for the Civil Action.

**5. Releases.**

For the consideration set forth in this Agreement, and for other good and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, on their own behalf and on behalf of their agents, partners, joint venturers, directors, officers, shareholders, insurers, beneficiaries, heirs, assigns, servants, employees, attorneys, and/or their respective spouses, and each of them, do hereby acknowledge full and complete satisfaction of, and hereby release, relieve and discharge all other parties and all other parties' agents, partners, joint venturers, insurers, beneficiaries, directors, shareholders, officers, heirs, assigns, servants, employees, Councilmembers, attorneys, and/or their respective spouses, and each of them from any and all claims, demands, damages, costs, attorney's fees, liabilities, obligations, expenditures, contract rights, liens and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, which any of these parties may now own or hold, or have at any time heretofore owned, or held against any of the other parties and their respective agents, partners, joint venturers, insurers, beneficiaries, heirs, assigns, servants, employees, Councilmembers, attorneys, and/or their respective spouses, and each of them, arising out of or relating to the Civil Action or the Appellate Action or any claims relating to the Project that could have been brought therein.

The foregoing release and discharge is intended by the parties to be as broad as they can possibly create, such that no possible claims of any kind can be brought by any of the parties relating to or arising from the subject matter referenced herein consisting of the Civil Action and/or the Appellate Action or claims related to the Project, and includes, but is not limited to, any liability or claims whatsoever: (a) that arise directly or indirectly out of or in any manner related to any contracts, representations, promises, statements, advice, counsel, warranties (express or implied), conduct, behavior, or guarantees ever given or made by anyone which relate to the Civil

Action or the Appellate Action; (b) that arise directly or indirectly out of or in any manner related to the damages alleged in the Civil Action or the Appellate Action; or (c) that arise directly or indirectly out of or in any manner related to any of the matters, occurrences, or transactions that were raised or that could have been raised in the Civil Action or the Appellate Action.

This release shall be a fully binding and complete settlement between the Parties and their respective heirs, beneficiaries, spouses, representatives, administrators, assigns, successors, and estates.

6. **Construction of Settlement.**

The Parties agree that the covenants and releases contained within this Agreement, and the waivers given by the parties pursuant to this Agreement, are not to be construed as an admission of any breach of contract, liability, or fault of any kind whatsoever by the Parties, but are to be construed strictly as a compromise and settlement of all disputes between the Parties to this Agreement for the purpose of avoiding further controversy, litigation and expense. The Parties further agree that all claims or allegations of liability or fault have been and are denied by the Parties.

7. **General Release and Waiver of Civil Code Section 1542.**

The Parties acknowledge and agree that the releases set forth in the Agreement are general releases, and further expressly waive and assume the risk of any and all claims of whatever kind or nature that exist as of this date but that Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect their decision to enter into the Agreement. The Parties further acknowledge that they have read California Civil Code Section 1542, and they waive all rights thereunder, which Section provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

8. **Attorney's Fees and Litigation Expenses.**

Each party to this Agreement will be responsible for their own attorney's fees, costs and litigation expenses incurred in connection with the Civil Action or the Appellate Action and the resolution of the dispute identified in this Agreement. However, the prevailing party in any action or legal proceeding brought to enforce any provision of this Agreement shall recover its costs and reasonable attorney's fees incurred therein.

9. **Representation of Comprehension of Document.**

In entering into this Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choosing, concerning the legal consequences of this Agreement; that the terms of this Agreement have been completely read and explained to the Parties by their respective attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

**10. Warranty of Capacity to Execute Agreement and of the Absence of Other Claims.**

The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that the Parties have the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, liens, obligations or causes of action referred to in this Agreement.

**11. Covenant Not to Sue.**

The Parties represent and warrant that each of them and their respective, heirs, beneficiaries, representatives, administrators, assigns, successors, estates, or any other person or entity claiming on behalf of or through the Parties have not brought and do not intend to bring any further actions, claims or liens based in any way on the claims made in the Civil Action or the Appellate Action related to the Project against either any of the other parties, or their agents, partners, joint venturers, insurers, beneficiaries, heirs, assigns, servants, employees, attorneys, and/or their respective spouses, and each of them. Moreover, the Parties covenant and agree that each of them and their heirs, beneficiaries, representatives, administrators, assigns, successors, estates, or any other person or entity claiming on behalf of or through the Parties, will not bring any further actions or claims based in any way on the Project that is the subject of this Agreement against either any of the other parties or their agents, partners, joint venturers, insurers, beneficiaries, heirs, assigns, servants, employees, attorneys, and/or their respective spouses, and each of them.

**12. Warranty About Unknown Damages.**

The Parties warrant and represent that the extent of damages, if any, sustained by the Parties may be unknown and the Parties understand, agree and warrant that the releases contained in this Agreement extend to all unknown or unanticipated damages, as well as to those that are now known or disclosed or anticipated.

**13. Acknowledgment of Sufficient Investigation/Discovery.**

The Parties acknowledge that they have conducted sufficient independent investigation and discovery to voluntarily enter into this Agreement to release the claims, actions, persons and entities referred to in this Agreement and, by executing this Agreement, state that they have not relied upon any statements or representations made by the Parties or any person or entity

representing the Parties, other than as set forth in this Agreement.

**14. Additional Documents.**

The Parties agree to cooperate fully and to timely and promptly execute and prepare any and all additional documents and to take all additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

**15. Entire Agreement and Successors in Interest.**

Except with respect to LQR's obligation to pay the City's attorneys' fees and costs related to the Civil Action and the Appellate Action, this Agreement contains the entire agreement between the Parties with regard to the matters set forth therein it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, spouses, beneficiaries, heirs, successors and assigns of each.

**16. Effectiveness.**

This Agreement shall become effective upon execution by the Parties and cannot be modified except by a signed consent executed by all of the Parties.

**17. Agreement Supersedes Other Agreements.**

This Agreement supersedes all prior agreements or understandings, whether written or oral, of the Parties hereto relating to the subject matter hereof and incorporates the entire understanding of the Parties with respect thereto. In the event of uncertainty in the terms of this Agreement, such uncertainty shall be resolved fairly and in accordance with the intent of the Parties as set forth herein, and without regard as to which party caused the uncertainty to exist. Notwithstanding anything to the contrary, LQR remains obligated to fully reimburse the City for all costs and expenses with regard to the Civil Action, the Appellate Action and this Agreement.

**18. Interpretation and Intent.**

The Parties agree that this Agreement is a product of draftsmanship by all sides, and the rule of interpreting an agreement against a drafting party does not apply. The intent of the Agreement is to maximize the protection and benefit of the released parties and their agents, partners, joint venturers, insurers, beneficiaries, heirs, assigns, servants, employees, attorneys, and/or their respective spouses, and each of them, and the Agreement should be interpreted consistent with the policy of finality of settlements and ending any and all litigation.

**19. Applicable Law.**

This Agreement shall, in all respects, be construed, interpreted, enforced and governed by and under the laws of the State of California.

**20. Venue and Jurisdiction.**

In the event any dispute arises out of, or relating to, this Agreement, venue and the sole jurisdiction shall be the State of California, Riverside County, Desert Judicial District - Palm Springs Branch.

**21. Independent Legal Counsel.**

Each party acknowledges that they have had the opportunity to retain independent legal counsel of their own choice throughout all of the negotiations which preceded the execution of this Agreement, and that each party has executed this Agreement with the consent and on the advice of such independent legal counsel.

**22. Assignment of Claims.**

All Parties warrant and represent to each of the other parties that no claims they might have, or do have, and which are otherwise referenced and released by this Agreement have been assigned to any other party or parties, and that there are no lawsuits pending between the Parties other than the Civil Action or Appellate Action. All Parties agree they will indemnify and hold each of the other parties harmless from any loss, including attorneys' fees and costs incurred which may result from breach of any term or condition of this Agreement.

**23. Time is of The Essence.**

The Parties acknowledge and agree that TIME IS OF THE ESSENCE with regard to each party's performance of the terms and conditions of this Agreement.

**24. Titles.**

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

**25. Counterparts.**

This Agreement may be executed in counterpart, and a signature by electronic mail (pdf format), or by facsimile, shall be binding and shall be deemed to be an original signature.

**26. Authority.**

Each party who signs on behalf of another person or entity, whether a corporation, partnership, limited liability company, trust, or other entity, hereby warrants and represents he/she/it has the authority to do so and to bind said person or entity to the terms of this Agreement and does so bind said person entity by his/her/its signature below. The signing party hereby understands he/she/it may be liable to the other parties for damages in the event said warranty and representation is later found to be false and/or erroneous or otherwise ineffective for any reason.



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement effective the day and year first above written. The undersigned hereby warrants that they are legally authorized and entitled to settle and to release every claim herein released and to give a valid, full and final acquittance therefore.

DATED: October \_\_\_\_, 2014

Save Our La Quinta Neighborhood

By: \_\_\_\_\_  
Name and Title

DATED: October \_\_\_\_, 2014

City of La Quinta

By: \_\_\_\_\_  
Name and Title

DATED: October \_\_\_\_, 2014

LQR PROPERTY, LLC  
By: LQR LA QUINTA INC.,  
Its Managing Member

  
\_\_\_\_\_  
ADAM GALLISTEL  
AUTHORIZED SIGNATORY

APPROVED AS TO FORM:


DEMETRIOU DELGUERCIO  
SPRINGER & FRANCIS, LLP

RUTAN & TUCKER

By: \_\_\_\_\_  
Jeffrey Zeddock B. Springer, Esq.  
Attorneys for Save Our  
La Quinta Neighborhood

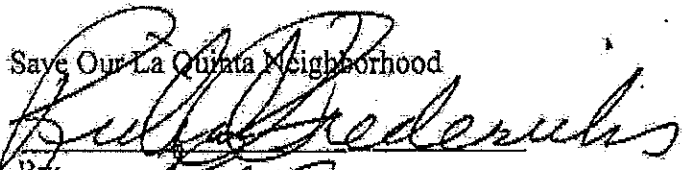
By: \_\_\_\_\_  
M. Katherine Jensen, Esq.  
Attorneys for City of La Quinta

ROEMER & HARNIK LLP

By:   
\_\_\_\_\_  
Brian S. Harnik, Esq.  
Attorneys for LQR

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first above written. The undersigned hereby warrants that they are legally authorized and entitled to settle and to release every claim herein released and to give a valid, full and final acquittance therefore.

DATED: October 27, 2014

Save Our La Quinta Neighborhood  
  
By: \_\_\_\_\_  
Name and Title

DATED: October \_\_\_\_, 2014

City of La Quinta  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name and Title

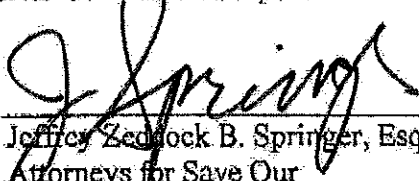
DATED: October \_\_\_\_, 2014

LQR PROPERTY, LLC  
\_\_\_\_\_  
By: LQR LA QUINTA INC.,  
Managing Member

APPROVED AS TO FORM:

DEMETRIOU DEL GUERCIO  
SPRINGER & FRANCIS, LLP

RUTAN & TUCKER

By:   
Jeffrey Zedlock B. Springer, Esq.  
Attorneys for Save Our  
La Quinta Neighborhood

By: \_\_\_\_\_  
M. Katherine Jensen, Esq.  
Attorneys for City of La Quinta

ROEMER & HARNIK LLP

By: \_\_\_\_\_  
Brian S. Harnik, Esq.  
Attorneys for LQR

# ROEMER & HARNIK LLP

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October 23, 2014

M. Katherine Jenson, Esq.  
Rutan & Tucker LLP  
611 Anton Blvd., 14th Floor  
Costa Mesa, CA 92626

Re: Save Our La Quinta Neighborhood v. City of La Quinta

Dear Ms. Jenson:

As you know, we represent LQR Property, LLC (“LQR”) the owner of the La Quinta Resort and the successor in interest to CNL Desert Resort, L.P. (“CNL”). Several years ago, CNL submitted plans to the City for the construction of a signature pool project at the resort. The City approved that project and approved Environmental Assessment 2006-573/Addendum to the EIR and issues Site Development Permit 2006-865 and Conditional Use Permit 2007-102 (collectively the “Signature Pool Entitlements”).

In response to such approvals, an unincorporated entity, called Save Our La Quinta Neighborhood (“SOLQN”) filed a CEQA petition in the Superior Court of California, and following judgment in favor of the City, filed an appeal currently pending with the California Court of Appeal.

LQR no longer wishes to construct the signature pool project as currently approved, and the parties wish to resolve the litigation once and for all. To do so, we have entered into a settlement agreement which is conditioned upon and subject to approval by the City Council of LQR’s surrender of the Signature Pool Entitlements and the Council’s approval of the settlement.

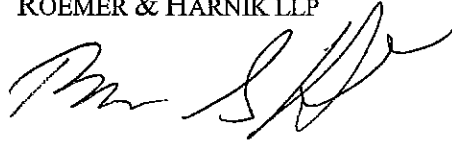
Attached is a copy of the settlement agreement that has been signed by SOLQN, LQR and their respective counsel. In essence, the settlement provides that SOLQN will dismiss its appeal, each side shall bear their own costs and attorneys fees and any future project submitted by LQR for the resort that requires government approvals shall be sought without reliance on the above referenced addendum to the EIR.

*M. Katherine Jenson, Esq.*  
*Rutan & Tucker LLP*  
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Accordingly, kindly accept this letter as LQR's request to approve both the surrender of the Signature Pool Entitlements and the settlement agreement.

Respectfully submitted,  
ROEMER & HARNIK LLP



BRIAN S. HARNIK

BSH:el  
Enclosure

cc: LQR Property, LLC  
Jeffrey Z. B. Springer, Esq.