

## **[TENTATIVE] SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and Release (this "Agreement") is entered into by and among Petitioner COACHILLIN' HOLDINGS, LLC ("Petitioner") and Respondent CITY OF DESERT HOT SPRINGS, a municipal corporation ("City" or "Respondent") to terminate fully and finally resolve all disputes arising out of, or related to, the Action defined hereinafter. Petitioner and the City are sometimes referred to herein collectively as the "Parties."

THIS AGREEMENT IS A TENTATIVE SETTLEMENT AGREEMENT BETWEEN THE PARTIES AND IS CONTINGENT UPON APPROVAL BY THE CITY COUNCIL OF RESPONDENT.

### **RECITALS**

A. On March 13, 2018, Petitioner filed a Petition for Writ of Mandamus Under California Public Records Act, Cal. Gov. Code §§6258-6259 (the "Petition") in the Superior Court of California, County of Riverside, which was assigned Case No. RIC1805014, alleging violations of the California Public Records Act ("the Action").

B. On April 30, 2018, Respondent filed an Answer to the Petition wherein it generally denied all the allegations in the Petition.

C. The Parties desire to resolve all pending and potential actions and issues associated with and related to the subject matter of the Action without the further expenditure of time or expense of litigation and, for that reason, have entered into this Agreement. This Agreement is a full release and settlement of all matters relating to the matters alleged in the Petition.

D. The Parties represent and agree that each fully understands its respective right to discuss all aspects of this Agreement with its attorneys, that each has availed itself of this right, that each has carefully read and fully understands all of the provisions of this Agreement, that each fully understands that it is waiving significant legal rights by signing this Agreement, and enters into this Agreement voluntarily, with a full understanding of and agreement with all of its terms.

E. The Parties acknowledge that the execution of this Agreement is the result of compromise and extensive negotiations between the Parties, that this Agreement is entered into in good faith by the Parties, and that this Agreement shall never be considered at any time or for any purpose as an admission of liability by either party.

### **AGREEMENT**

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, the Parties agree as follows:

**1. Effective Date.**

This Agreement shall become effective on the date that all Parties have executed this Agreement, it is subsequently approved by the City Council of Respondent, and Respondent provides notice to Petitioner ("Effective Date").

**2. Settlement Sum.**

In consideration of the covenants undertaken and releases contained in this Agreement, Respondent agrees to issue a credit in this sum of Fifty-Five Thousand Dollars (\$55,000) as the total amount due (the "Settlement Sum") to Petitioner in full consideration and settlement of any and all claims by the Petitioner. The Settlement Sum shall be in the form of a credit to be used against Petitioner's requirement to pay development fees, permitting fees, and all other fees in support of Petitioner's development endeavors in the City. Respondent agrees to credit the Settlement Sum beginning on the Effective Date. The City's Administrative Services Department shall keep an accounting of Petitioner's use of the Settlement Sum. California Labor Code section 1720 et seq. shall not be applicable to any use of Settlement Sum by Petitioner on any of its projects and/or developments in the City.

**3. Dismissal of Claims Against Respondent in the Action with Prejudice.**

Petitioner shall cause the Action to be dismissed in its entirety against the City with prejudice within seven (7) calendar days of the Effective Date. The Parties shall bear their own attorney's fees and costs related to the Action and the negotiation and execution of this Agreement.

**4. Notice of Default/Retention of Jurisdiction.**

In the event Respondent has not issued the Settlement Sum in the form of credit as described herein in paragraph 2, Petitioner shall notify Respondent by e-mail to Respondent's counsel as follows:

Theodore K. Stream  
Stream Kim Hicks Wrage & Alfaro, PC  
3403 Tenth Street, Suite 700  
Riverside, CA 92501  
Ted.Stream@StreamKim.com

Copy to:  
Jennifer Mizrahi  
Law Offices of Quintanilla & Associates  
42222 Rancho Las Palmas Drive #176  
Rancho Mirage, CA 92270  
JenniferM@QALawyers.com

If Respondent does not make the required Settlement Sum available to Petitioner within seven (7) City business days following the date of said notice by Petitioner, Petitioner shall be



entitled to immediately apply to the Court having proper jurisdiction by Ex Parte Application for Judgment in the amount of the Settlement Sum. The Court shall retain jurisdiction under California Code of Civil Procedure section 664.6 to enforce the terms of this Agreement.

**5. General Mutual Release.**

As a material inducement to Respondent to enter into this Agreement, Petitioner does hereby, for itself and its heirs, successors, and assigns forever release Respondent, and the Respondent's elected and appointed public officials, the City's officers, employees and agents, and including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, insurers, attorneys, related entities, and all persons acting by, through, under, or in concert with any of them ("Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time to the date of the execution of this Agreement, known or unknown, suspected or unsuspected, limited only to claims arising out of, based upon, or relating to the subject matter of the Action.

As a material inducement to Petitioner to enter into this Agreement, Respondent does hereby, for itself and its heirs, successors, and assigns forever release Petitioner and each of its partners, parents, assigns, agents, representatives, insurers, attorneys, related entities, and all persons acting by, through, under, or in concert with any of them, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time to the date of the execution of this Agreement, known or unknown, suspected or unsuspected, limited only to claims arising out of, based upon, or relating to the subject matter of the Action.

**6. Discovery of Different or Additional Facts.**

The Parties acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the Releases set forth in Paragraphs 5 and 7 of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, and the Parties agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

**7. Release of Unknown Claims.**

The Release set forth above in Paragraph 5 of this Agreement is a release of all claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims that the Parties may have as a result of the Action.

**8. Waiver of Civil Code Section 1542.**

Further, the Parties expressly agree to waive and relinquish all rights and benefits they may have against one another and the Releasees under Paragraph 5 of this Agreement based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

**“§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all Parties, the Parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all known or unknown claims that the Parties have or may have against each other, related to the Action, at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claims.

**9. No Other Pending Actions.**

Petitioner represents that it has not filed any petitions or charges (other than the Action referenced above) against the City and/or its Releasees with any local, state or federal agency or court.

**10. No Admission of Liability.**

The Parties acknowledge and agree that this Agreement is a settlement of a disputed claim. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any party hereto, or any of its employees or former employees, or any affiliated person(s) or entity/ies, including the City's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to Petitioner.

**11. No Assignment of Claims.**

Petitioner warrants that it has made no assignment, and will make no assignment, of any claim, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

**12. Successors and Assigns.**

This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and each of their respective heirs, legal representatives, successors and assigns.



**13. Knowing and Voluntary.**

This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that, prior to signing this Agreement, they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement. Furthermore, each party has had the opportunity to revise, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

**14. Assistance of Counsel.**

The Parties each specifically represent that they have consulted to their satisfaction with, and received independent advice from, their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.

**15. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

**16. Singular and Plural.**

Whenever required by the context, as used in this Agreement, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

**17. Enforcement Costs.**

Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

**18. Severability.**

Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

**19. Headings.**

Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

**20. Waiver.**

Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

**21. Governing Law.**

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of said State without giving effect to conflicts of laws principles.

**22. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

**23. Modifications.**

Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

**24. Authority.**

Each person who signs this Agreement represents and warrants that he or she has the authority to sign the Agreement on behalf of the party on whose behalf he or she is signing the Agreement, he or she is acting within the course and scope of such authority in executing this Agreement, and that this Agreement shall be binding on said party.

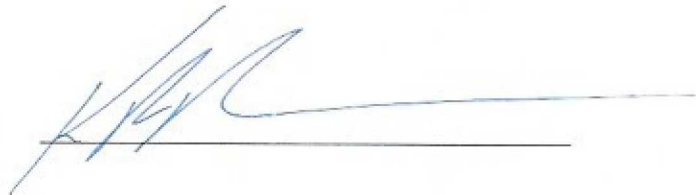
The undersigned have executed this Settlement Agreement and Release on the dates set forth below.

“PETITIONER”

COACHILLIN’ HOLDINGS, LLC

Dated: Oct 8, 2018

By:



Its \_\_\_\_\_,  
Managing Member

“RESPONDENT”

CITY OF DESERT HOT SPRINGS, a municipality

Dated: \_\_\_\_\_, 2018

By:

Scott Matas, Mayor

“RESPONDENT”

CITY OF DESERT HOT SPRINGS, a municipality

Dated: \_\_\_\_\_, 2018

By:

Jerryl Soriano, City Clerk  
Attestation