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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(LA QUINTA FRANCHISING, LLC)

NO. **18-2-56303-8 SEA**

LA QUINTA FRANCHISING, LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (“AOD”) pursuant to RCW 19.86.100.

I. PARTIES

1.1 On August 6, 2018, the Attorney General’s Office initiated an investigation into La Quinta Franchising, LLC (“La Quinta”) relating to certain provisions in its franchise agreements by way of service of a Civil Investigative Demand (“CID”).

1.2 La Quinta is a Nevada limited liability company with its principal offices or place of business in Parsippany, New Jersey. La Quinta is indirectly-owned by Wyndham Hotels & Resorts, Inc. La Quinta is a franchisor with franchise locations in Washington operating in the business of hotel accommodations.

1.3 For purposes of this AOD, La Quinta includes its directors, officers, managers, agents acting within the scope of their agency and employees acting within the scope of their authority, as well as its successors and assigns.

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II. INVESTIGATION

2.1 There are approximately 16 La Quinta hotels located in the state of Washington as of the date hereof, all of which are independently owned by franchisees. Thirteen of these hotels are independently owned and operated by franchisees. Three hotels are currently operated by an affiliate of La Quinta pursuant to franchise and management agreements with the owner.

2.2 Certain of the franchise agreements La Quinta previously entered into provided that franchisees subject to such agreements could not directly or indirectly solicit for employment any person who was, at that time, employed by La Quinta or by any other La Quinta franchisee (the "No-Solicitation Provision"). Specifically, La Quinta had included, within Section 7.07 (Section 6.07 for older versions) of its franchise agreements, the following sentence:

You may not recruit or hire any person who is an employee of ours, our Affiliates or of any La Quinta Lodging Facility or Affiliated Lodging Facility operated by us, our Affiliates or another franchisee of ours without obtaining the employer's consent, which consent may be withheld for any reason or not reason.

2.3 The Attorney General asserts that the foregoing conduct of La Quinta and its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.

2.4 La Quinta expressly denies that the conduct described above constituted a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, rule, or regulation, and expressly denies it engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law, rule, or regulation. La Quinta further asserts that, prior to the issuance of the CID, it had eliminated the No-Solicitation Provision from its form U.S. franchise agreements. La Quinta enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an

1 admission of law, fact, liability, misconduct, or wrongdoing on the part of La Quinta or any of
2 its current or former franchisees.

3 **III. ASSURANCE OF DISCONTINUANCE**

4 3.1 Subject to Paragraph 2.4 above, La Quinta agrees:

5 3.1.1. It will not insert or reinsert the No-Solicitation Provision in any of its
6 franchise agreements in the United States signed after the date hereof;

7 3.1.2. It does not and will not enforce the No-Solicitation Provision in any of
8 its existing franchise agreements in the United States, and will not seek to intervene in any
9 action brought by the Attorney General's Office against a current franchisee in Washington,
10 provided such action is brought in accordance with, and consistent with, the provisions of this
11 AOD;

12 3.1.3. It will notify all of its current franchisees in the United States of the
13 entry of this AOD and make a copy available to them;

14 3.1.4. If, after the 21 day period set forth in Paragraph 3.2 below, La Quinta
15 becomes aware of a franchisee with a hotel located in the state of Washington attempting to
16 enforce the No-Solicitation Provision, and La Quinta is unable to persuade such franchisee to
17 desist from enforcing or attempting to enforce such provision, La Quinta will notify the
18 Attorney General.

19 3.2 Within 21 days of entry of this AOD, La Quinta will send a letter to all of its
20 current franchisees with hotels located in the state of Washington whose franchise agreement
21 includes such a provision, stating that the Attorney General has requested that those franchise
22 agreements be amended to remove the No-Solicitation Provision. The letter that La Quinta
23 will send to its current franchisees with hotels located in the state of Washington whose
24 franchise agreement includes such a provision will be substantially in the form of the letter
25 attached hereto as Exhibit A. That letter will enclose the proposed amendment that La Quinta
26

1 is requesting that each of its franchisees with hotels located in the state of Washington agree to,
2 which amendment will remove such No-Solicitation Provision. The proposed amendment that
3 will be included with each letter will be substantially in the form of the amendment attached
4 hereto as Exhibit B.

5 3.3 In addition to sending the letter to its current franchisees with hotels located in
6 the state of Washington whose franchise agreement includes such a provision pursuant to
7 Paragraph 3.2 above, La Quinta will respond promptly to any inquiries from such franchisees
8 regarding the request to amend the terms of the franchise agreement. However, for the
9 avoidance of doubt, La Quinta is under no obligation to offer its franchisees any
10 consideration—monetary or otherwise—in order to induce them to sign the proposed
11 amendment, or take any adverse action against such franchisees if they refuse to do so. Within
12 120 days of entry of this AOD, La Quinta will provide copies of all executed amendments it
13 has obtained with its current franchisees with hotels located in the state of Washington whose
14 franchise agreement includes such a provision to the Attorney General's Office. A decision by
15 a franchisee not to amend its franchise agreement, or not to do so within 120 days of this AOD,
16 shall not constitute a breach by La Quinta of its obligations under this AOD or a failure by La
17 Quinta to comply with this AOD.

18 3.4 If La Quinta learns that a current franchisee with hotels located in the state of
19 Washington whose franchise agreement includes such a provision intends in good faith to sign
20 the proposed amendment but is unable to do so within the time period specified in Paragraph
21 3.3, La Quinta will notify the Attorney General's Office to seek a mutually agreeable
22 extension. During any such extension, the Attorney General's Office will not take further
23 investigative or enforcement action against a franchisee.

1 related statutes pertaining to the acts of La Quinta and its current and former franchisees as set
2 forth in Paragraphs 2.1 – 2.4 above that may have occurred before the date of entry of this AOD,
3 or that occur between the date of the entry of this AOD and the conclusion of the 120-day period
4 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph
5 4.1, the State of Washington and the Antitrust Division of the Attorney General’s Office shall not
6 file suit, take any enforcement action or further investigative action, or seek to intervene in any
7 other enforcement action, investigative action, or private civil action, with respect to the acts set
8 forth above that occurred before the date of entry of this AOD, or that occurs between the date of
9 the entry of this AOD and the conclusion of the 120-day period identified in Paragraph 3.3 above,
10 against La Quinta or any of its current franchisees in the State of Washington whose franchise
11 agreements include(d) a Non-Solicitation Provision and who sign the proposed amendment
12 included as Exhibit B, as well as any of La Quinta’s former franchisees in the state of Washington
13 and any of La Quinta’s current or former franchisees located outside the state of Washington.

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APPROVED ON this _____ day of _____, 2018.

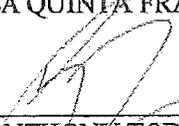
JUDGE/COURT COMISSIONER

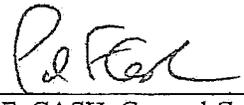
1 Presented by:
2 ROBERT W. FERGUSON
3 Attorney General

4 
5 RAHUL RAO, WSBA No. 53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104

11 Agreed to and approved for entry by:
12 LA QUINTA FRANCHISING LLC

LA QUINTA FRANCHISING LLC

13 
14 ANTHONY TODARO, WSBA #30391
15 DLA Piper LLP (US)
16 Counsel for La Quinta Franchising LLC


17 PAUL F. CASH, General Counsel

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1 **EXHIBIT B**

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3 **AMENDMENT**
4 **LA QUINTA FRANCHISE AGREEMENT**

5 This "Amendment" is made and entered into as of this __ day of _____, 2018 ("Amendment
6 Date") by and between La Quinta Franchising LLC, a Nevada limited liability company ("we", "our" or
7 "us") and the undersigned franchisee ("you" or "your"). This Amendment supplements the Franchise
8 Agreement between you and us dated _____ (the "Agreement"), relating to a license to operate a
9 La Quinta® guest lodging facility designated as Unit # _____ (the "Facility"). To the extent there is any
10 conflict between the Agreement and this Amendment, this Amendment shall control.

11 In consideration of the mutual agreements herein contained, and promises herein expressed, and
12 for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the
13 parties, it is agreed as follows:

14 1. The parties acknowledge that the Agreement contains a non-solicitation provision
15 comprised of the final sentence of Section [7.07/6.07] in its entirety ("Non-Solicitation Provision"). We
16 have determined that it is in the best interests of the La Quinta System to not enforce any Non-Solicitation
17 Provisions of the Agreement. While we contend that the Non-Solicitation Provisions are no longer in
18 force and effect, to avoid any ambiguity and in accordance with our agreement with the Attorney General
19 of the State of Washington, as of the Amendment Date, you and we agree that the Non-Solicitation
20 Provisions are hereby deleted from the Agreement and are of no force or effect.

21 2. Except as expressly stated in this Amendment, no further additions, modifications or
22 deletions to the Agreement are intended by the parties or made by this Amendment.

23 3. To facilitate execution of this Amendment by geographically separated parties, this
24 Amendment, and all other agreements and documents to be executed in connection herewith may be
25 executed in as many counterparts as may be required; and it shall not be necessary that the signatures on
26 behalf of each party appear on each counterpart; but it shall be sufficient that the signature on behalf of
each party appear on one or more of the counterparts. All counterparts shall collectively constitute a
single agreement. It shall not be necessary in making proof of this Amendment to produce or account for
more than a number of counterparts containing the respective signatures on behalf of all the parties hereto.
All facsimile executions shall be treated as originals for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as
of the date indicated above.

22 **La Quinta Franchising LLC**

[FRANCHISEE'S NAME]

23
24 By: _____
Name: _____
25 Title: _____

23
24 By: _____
Name: _____
25 Title: _____