

## **SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT**

This Settlement and Release Agreement (the "Agreement"), is made and entered into by and between Lawrence Celano and Richard Thesing (collectively "Plaintiffs"), and Ocean Colony Partners, LLC ("OCP" or "Defendant").

### **RECITALS**

On or about October 4, 2005, Plaintiffs filed in the United States District Court for the Northern District of California, Case No. C-05-4004-PJH, (the "Complaint") against OCP, Marriott International, Inc., and Host Marriott Corporation, a Class Action Complaint for Injunctive and Declaratory Relief (the "Complaint"). In the Complaint, Plaintiffs allege violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, Cal. Civ. Code § 54, and the Unruh Civil Rights Act, Cal. Civ. Code § 51.

Plaintiffs and OCP (sometimes referred to herein as "the Parties") have agreed to resolve the claims Plaintiffs have against OCP pursuant to the terms of this Agreement, rather than incur the costs and expenses associated with litigating their disputes.

### **AGREEMENT**

In consideration of the recitals listed above, and the mutual promises contained in this Agreement, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree, covenant, and represent as follows:

#### **1. OCP'S RESPONSIBILITIES.**

**(a) Acquisition of Accessible Golf Carts.** Within 60 days of the effective date of this agreement, OCP agrees to acquire for use on Half Moon Bay Golf Links' golf courses by mobility-impaired golfers two accessible golf carts ("Accessible Cart"), such as the SoloRider single-rider golf cart, that allow mobility-impaired individuals to operate the golf cart with hand controls and that contain seats that rotate and/or tilt so that a seated golfer may be placed in a standing position. OCP further agrees to acquire up to two additional Accessible Carts, at its sole discretion, in the event OCP determines demand, technology, and experience warrant such additional acquisitions. OCP agrees to maintain the Accessible Carts in good repair.

**(b) Terms and Conditions of Use.** OCP shall make the Accessible Carts available for use under the same terms and conditions as apply to standard golf carts. Subject to the above limitations, OCP agrees to allow the Accessible Carts on the tees and greens and in sand traps except in those locations where damage would be caused to the lip of the trap. OCP agrees to make the Accessible Carts available for use during times when standard cart usage is otherwise prohibited, at course management's sole discretion and subject to any limitations course management deems reasonable and appropriate. For example, on "cart path only" days a mobility-impaired golfer may use the accessible golf cart on the tees, greens, and fairways, and in the sand traps, except in instances when excessive heat, moisture stress, new turf, or other weather-related or maintenance-related conditions create unreasonable safety issues or would result in any cart traffic causing unreasonable turf damage. To avoid safety hazards or golf course damage, course management shall also have the right to restrict or

prohibit all golf cart traffic, including use of the Accessible Carts, at OCP's sole discretion, (i) from special areas of the golf courses such as steep embankments, sand trap lips, native grasses, water hazards and ocean bluffs; and (ii) in instances of excessive heat, moisture stress, new turf, or other weather-related or maintenance-related conditions. OCP reserves the right to request from any individual requesting an Accessible Cart proof of a disability, such as a government-issued permanent disabled car placard or other identifying information which may reasonably be accepted as valid, and to require prior training or instruction for those golfers using an Accessible Cart.

**(c) Publication.** OCP agrees to publicize the availability of the Accessible Carts at the Half Moon Bay Golf Links' golf course (i) via a press release; and (ii) via its website at [www.halfmoonbaygolf.com](http://www.halfmoonbaygolf.com).

**(d) On-Site Visits.** OCP agrees to allow Plaintiffs and/or their representatives to visit and inspect the Half Moon Bay Golf Links' premises, without notice, on two occasions per year to ensure availability and proper maintenance of the Accessible Carts.

**(e) Attorney's Fees.** The parties agree that OCP shall pay Plaintiffs' attorneys, Disability Rights Advocates and Chavez & Gertler LLP, for reasonable attorney's fees incurred in relation to the disputes alleged in the Complaint, for a total sum of \$20,000.

**2. RELEASE.** Plaintiffs and their representatives, heirs, successors, and assigns do hereby completely release and forever discharge OCP, any Affiliate, and their present and former shareholders, officers, directors, agents, employees, attorneys, successors, and assigns (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which Plaintiffs have now or in the future arising from any act or omission or condition occurring on or prior to the date of this Agreement (including, without limitation, the future effects of such acts, omissions, or conditions), whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims") relating to any and all disability claims regarding Ocean Colony Partners and the Half Moon Bay Golf Links' golf courses, including but not limited to, claims under the Americans with Disabilities Act, the Unruh Act, codified as California Civil Code section 51, and California Civil Code section 54.

**3. SECTION 1542 WAIVER.** Plaintiffs understand and agree that the Released Claims include not only claims presently known to Plaintiffs, but also include all unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character that would otherwise come within the scope of the Released Claims as described in Section 2. Plaintiffs understand that they may hereafter discover facts different from what they now believe to be true, which if known, could have materially affected this Agreement, but they nevertheless waive any claims or rights based on different or additional facts. Plaintiffs knowingly and voluntarily waive any and all rights or benefits that they may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

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.

**4. DISMISSAL OF OCP FROM ACTION.** Plaintiffs agree that they will cause to be dismissed, with prejudice, any and all claims alleged against OCP or any Releasee, including without limitation, the claims as alleged against OCP in the Complaint.

**5. NONADMISSION.** The parties understand and agree that this Agreement is a compromise settlement of disputed claims and that the furnishing of the consideration for this agreement shall not be deemed or construed at any time or for any purpose as an admission of liability by OCP. The liability for any and all claims is expressly denied by OCP.

**6. ARBITRATION.** To the fullest extent permitted by law, all claims that Plaintiffs, individually or collectively, may have against OCP or any other Releasee, or which OCP may have against Plaintiffs, in any way related to the subject matter, interpretation, application, or alleged breach of this Agreement (“Arbitrable Claims”) shall be resolved by arbitration. Prior to commencement of arbitration, the Party seeking redress must notify the other Party in writing of the claim and the basis for the claim within sixty (60) days of the discovery of the incident giving rise to the claim.

Arbitration of Arbitrable Claims shall be before a single arbitrator at JAMS, and shall be conducted in accordance with the then-current JAMS Comprehensive Arbitration Rules and Procedures, as amended and as augmented by this Agreement. The decision of the arbitrator shall be in writing and shall include a statement of the essential conclusions and findings upon which the decision is based. The prevailing party shall be entitled to recover reasonable attorney’s fees, the amount of such fees to be determined by the arbitrator. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all Arbitrable Claims. Either Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither Party shall initiate or prosecute any lawsuit or administrative action in any way related to any Arbitrable Claim. Notwithstanding the foregoing, either party may, at its option, seek injunctive relief pursuant to section 1281.8 of the California Code of Civil Procedure.

**7. INTEGRATION.** The parties understand and agree that the preceding sections recite the sole consideration for this Agreement; that no representation or promise has been made by Plaintiffs, OCP, or any other Released Party on any subject whatsoever, except as expressly set forth in this Agreement; and that all agreements and understandings between the Parties on any subject whatsoever are embodied and expressed in this agreement. This Agreement shall supersede all prior or contemporaneous agreements and understandings among Plaintiffs, OCP, and any other Released Party, whether written or oral, express or implied, with respect to any subject whatsoever.

**8. AMENDMENTS; WAIVERS.** This Agreement may not be amended except by an instrument in writing, signed by each of the parties. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

**9. ASSIGNMENT; SUCCESSORS AND ASSIGNS.** Plaintiffs agree that they will not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement. Any such purported assignment, transfer, or delegation shall be null and void. Plaintiffs represent that they have not previously assigned or transferred any claims or rights released by them pursuant to this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, attorneys, and permitted assigns. This Agreement shall also inure to the benefit of any Released Party. This Agreement shall not benefit any other person or entity except as specifically enumerated in this Agreement.

**10. SEVERABILITY.** If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

**11. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**12. INTERPRETATION.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

**13. COUNTERPARTS AND FACSIMILE SIGNATURE.** This agreement may be executed in counterparts and/or by facsimile signature with the same force and effect as if all original signatures were set forth in a single document.

**14. REPRESENTATION BY COUNSEL.** The parties acknowledge that (i) they have had the opportunity to consult counsel in regard to this Agreement; (ii) they have read and understand the Agreement and they are fully aware of its legal effect; and (iii) they are entering into this Agreement freely and voluntarily, and based on each party's own judgment and not on any representations or promises made by the other party, other than those contained in this Agreement.

LAWRENCE CBLANO

Dated: 2/21/06

Lawrence Cblano

RICHARD THESING

Dated: \_\_\_\_\_

OCEAN COLONY PARTNERS, LLC,  
a California limited liability company

Dated: \_\_\_\_\_

By: Whitestar Advisors, LLC, a Florida  
limited liability company, its manager

By: James E. Bishop  
Title: Managing Director

LAWRENCE CELANO

Dated: \_\_\_\_\_

\_\_\_\_\_

RICHARD THESING

Dated: 2-18-2006

Richard Thesing

OCEAN COLONY PARTNERS, LLC,  
a California limited liability company

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Whitestar Advisors, LLC, a Florida  
limited liability company, its manager

By: James E. Bishop  
Title: Managing Director

LAWRENCE CELANO

Dated: \_\_\_\_\_

\_\_\_\_\_

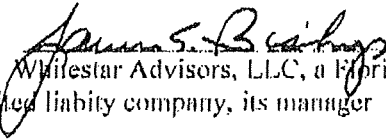
RICHARD THESING

Dated: \_\_\_\_\_

\_\_\_\_\_

OCEAN COLONY PARTNERS, LLC,  
a California limited liability company

Dated: 2-27-06

  
By: ~~Wilestar~~ Advisors, LLC, a Florida  
limited liability company, its manager

By: James E. Bishop  
Title: Managing Director