

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CAROLYN NOLEN, WINDY KELLEY,
CARA KELLEY and PAULA LITTON,
on behalf of themselves and all others
similarly situated,

CASE NO.: 6:20-cv-00330-PGB-EJK

Plaintiffs,

v.

FAIRSHARE VACATION OWNERS
ASSOCIATION;

Defendant.

AMENDED AND RESTATED CLASS ACTION COMPLAINT

The Plaintiffs Carolyn Nolen, Windy Kelley, Cara Kelley and Paula Litton, state the following as their causes of action against the above-named Defendants:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005 (“CAFA”) because: (1) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” (2) the action is pled as a class action involving more than 100 putative class members, and (3) “any member of a class of plaintiffs is a citizen of a State different from any defendant.”

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Defendant is subject to personal jurisdiction in this district, a substantial part of the property that is the subject of this action is situated in this district, and a substantial portion of Defendant’s

conduct that forms the basis of this action occurred in Florida, including within the boundaries of this district.

THE PARTIES

3. Fairshare Vacation Owners Association (“Defendant” or “Trustee”), is an Arkansas corporation with its principal place of business located in Orlando, Florida.

4. Plaintiffs Carolyn Nolen, Windy Kelley, Cara Kelley and Paula Litton, are resident citizens of the State of Alabama.

THE TRUST

5. The Fairshare Vacation Plan Use Management Trust Agreement (the “Trust”) is believed to have become effective on June 26, 1991. Through the years, the Trust has been amended. The current version of the Trust became effective on March 14, 2008. (Attached hereto as Exhibit A is a copy of the Trust).

6. The Trust was formed in Arkansas and is governed by Arkansas law. *See* Ex. A, Art. 2 § 2.03.

7. Defendant serves as the Trustee for the Trust.

8. Under the terms of the Trust, “Trust Properties” consist of “all Property Interests subjected to this Trust Agreement and all use Rights in Property Interests conveyed, assigned or subjected to this Trust Agreement in accordance with the terms of this Trust Agreement. . .”. *See* Ex. A, Art. 1.

9. The Trust defines a “Property Interest” as “an interest in a Vacation Unit or Vacation Plan or an undivided interest in on or more Vacation Units, each of which interests or the Use Rights therein is/are subjected to this Trust Agreement. . .” *See id.*

10. Trust Properties are typically acquired by the Trust through timeshare sales transactions conducted by an affiliated entity of the Trustee known as Wyndham Vacation Resorts, Inc. (“WVR”). When a consumer purchases a timeshare interest, WVR requires the timeshare interest or use rights be assigned to the Trust. Only through this assignment can a timeshare owner fully participate in WVR’s timeshare program known as “Club Wyndham Plus.”

11. By virtue of assigning a timeshare interest or use rights to the Trust, timeshare owners become Beneficiaries of the Trust. *See* Ex. A, Art. 1. As the Trustee, Defendant owes to all Beneficiaries, including timeshare owners, the duty of undivided loyalty. Further, as the Trustee, Defendant is prohibited from entering into any transaction with an affiliated company and from using Trust Properties to profit for itself or its affiliates.

WVR’S TIMESHARE BUSINESS

12. WVR sells timeshares, finances timeshare purchases, and manages timeshare properties.

13. WVR also sells “upgrades” to existing timeshare owners. Upgrades to existing timeshare owners constitute approximately 70% of WVR’s timeshare sales during the proposed class period.

14. Most timeshare owners finance a portion of their initial timeshare purchase and any subsequent upgrades.

DEFENDANT’S AFFILIATED RELATIONSHIP WITH WYNDHAM VACATION RESORTS AND WYNDHAM CONSUMER FINANCE, INC.

15. The Trustee is governed by a board of directors. This board of directors is composed solely of high ranking WVR executives. Serving as the board of directors for the Trustee, these WVR executives control the activity and decision-making authority of the Trustee.

16. Despite the existence of a clear conflict of interest and the Arkansas Trust Code's prohibition on these types of agreements, Defendant allows its affiliates WVR and Wyndham Consumer Finance, Inc. ("WCF") to serve as the exclusive lender and servicer of all timeshare loans involving Trust Properties. WVR and WCF charge the Beneficiaries of the Trust (i.e. timeshare purchasers) above-market interest rates and loan servicing fees.

17. The Trustee also allows its affiliate WVR to securitize large pools of consumer time share loans which it then sells. The income generated by this securitization practice is used to finance WVR's operations. The security for the pools consists of timeshare loans on Trust Properties. Yet, none of the income from the securitization agreements is shared with the Trust's Beneficiaries, including Plaintiffs

18. In further disregard of the prohibition on a trustee transacting business with an affiliate, Defendant entered into a Management Agreement with WVR that allows WVR to serve as the exclusive "Plan Manager" for all Trust Properties. *See* Ex. A at Art. 6.03; *see* also Management Agreement attached hereto as Exhibit B. In a clear conflict of interest, the Management Agreement delegates all of the "powers and authority" of the Trustee to WVR as the Plan Manager. *See* Ex. C at § 5.1(a).

EXCESSIVE FEES AND SURPLUS FUNDS

19. As Trustee and as Plan Manager, Defendant and WVR collect a variety of fees from Beneficiaries of the Trust, including Plaintiffs, that constitute profit to the Trustee and to WVR.

20. Specifically, all beneficiaries – except WVR – must pay a "Fairshare Plus Assessment," consisting of the sum of a "Program Fee" and an "OA Fee." The Program Fee is set by WVR and approved by the Trustee. The Trust provides that the Program Fee shall amount to

what is needed to cover the cost of the operation and administration of the Trust. The Program Fee is also used to cover the operation, maintenance, repair and replacement of the Trust's properties. Exh. A, Art. X. Upon information and belief, the Program Fee greatly exceeds the amount necessary to cover the cost of the operation and administration of the Trust and the operation, maintenance, repair and replacement of the Trust Properties. Upon information and belief, the Program Fee results in substantial profits to the Trustee.

21. Through the collection of excess fees and revenue from Plaintiffs and the Class, the Trustee has accumulated a positive Trust fund balance. This surplus trust fund balance is currently held by Defendant exclusively for its own use. Despite accumulating substantial profits from the Trust and holding those funds for its own use, Defendant continues to increase the amount of fees and revenues it collects from Plaintiffs and the class.

THE NOLEN TRANSACTION

22. On July 31, 2015, Plaintiff Carolyn Nolen, and her former husband, purchased a timeshare from WVR (Contract Number 00126-1518153). A copy of Ms. Nolen's timeshare contract is attached hereto as Exhibit C.

23. The total cost of Ms. Nolen's purchase was \$21,413.80. Ms. Nolen paid for her timeshare purchase using a Wyndham Rewards Visa credit card which was issued to her in conjunction with her timeshare purchase. After an initial six month period, the interest rate for this credit card was 14.99%.

24. Ms. Nolen's timeshare interest or the use rights therein were assigned to the Trust. This assignment resulted in Defendant gaining complete control over Ms. Nolen's timeshare and Ms. Nolen becoming a beneficiary of the Trust.

THE KELLEY/LITTON TRANSACTION

25. On January 5, 2016, Plaintiffs Windy Kelley, Cara Kelley, and Paula Litton purchased a timeshare from WVR (Contract Number 00219-1600048). A copy of the Kelley/Litton timeshare contract is attached hereto as Exhibit D.

26. The cash purchase price for the Kelleys' and Ms. Litton's timeshare contract was \$207,047.98. The Kelleys and Ms. Litton financed \$62,156.30 through WVR at an 11.49% interest rate. The resulting loan was serviced by WCF.

27. The Kelleys and Ms. Litton assigned their timeshare interest or the use rights therein to the Trust. This assignment resulted in Defendant gaining complete control over the Kelleys' and Ms. Litton's timeshare and the Kelleys and Ms. Litton becoming Beneficiaries of the Trust.

CLASS ALLEGATIONS

28. Plaintiffs bring this action as a class action under Federal Rule of Civil Procedure 23 and propose the following class:

29. The Proposed Class is defined as:

All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to the Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.

30. Excluded from the proposed Class are members of the judiciary assigned to this case, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the above Class is Defendant, including any entity in which Defendant has a controlling interest, are a parent or subsidiary, or which is controlled by Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Defendant.

31. This action is brought and may properly be maintained as a class action pursuant to Fed.R.Civ.P. 23(a),(b)(1),(2),(3) and (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

32. Plaintiffs maintain the right to create additional subclasses or classes, if necessary, and to revise this definition to maintain a cohesive class that does not require individual inquiry to determine liability.

33. The exact number of class members is unknown to Plaintiffs at this time, but such information can be ascertained through appropriate discovery, specifically from records maintained by the Defendants. Upon information and belief, the number of putative members of the class exceeds 1,000 persons and entities.

**EXISTENCE AND PREDOMINANCE OF
COMMON QUESTIONS OF LAW AND FACT**

34. There are common questions of law and fact common and of general interest to the Class. These common questions of law and fact predominate over any questions affecting only individual members of the class. Such common questions include, but are not limited to, the following:

- a. Whether the Trustee violated its duties under Arkansas Trust law;
- b. Whether the Trustee pays itself unreasonable fees to serve as Trustee for the Trust;
- c. Whether a conflict of interest exists between the Trustee and the Beneficiaries of the Trust;
- d. Whether the Trust produces profit for the Trustee or for its affiliated entities against the interests of all other Beneficiaries of the Trust;
- e. Whether the Trustee breached its fiduciary duties;

- f. Whether the Trustee or its affiliated entities profited from transactions involving Trust Properties;
- g. Whether Plaintiffs and class members are entitled to class relief as requested herein.

TYPICALITY AND NUMEROSITY

35. The claims of Plaintiffs are typical of the claims of the Class. The Trustee's common course of conduct caused Plaintiffs and all proposed class members the same harm. The Trustee's conduct caused Plaintiffs and each class member economic harm. Upon information and belief, the total number of members of the proposed class exceeds 1,000 members and is so numerous that separate joinder of each member is impracticable.

ADEQUATE REPRESENTATION

36. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of other class members, and the Court should appoint Plaintiffs as the class representative. Plaintiffs have retained class counsel competent to prosecute class actions, and the Court should appoint Plaintiffs' counsel as Class Counsel.

SUPERIORITY

37. The Class may be properly maintained under Fed. R. Civ. P. 23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interests of judicial economy favor adjudicating the claims for the class rather than on an individual basis. The class action mechanism provides the benefit of unitary adjudication, economies of scale, and comprehensive supervision by a single court.

38. Questions of law and fact predominate over any questions affecting only individual members.

COUNT 1
Declaratory Judgment

39. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if fully set forth herein.

40. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

41. An actual controversy has arisen and now exists between Plaintiffs and the Class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Trust.

42. Plaintiffs and the Class contend that Defendant breached its fiduciary duties, including the duty of loyalty and the duties against self-dealing and profiting.

43. Plaintiffs, therefore, seek a declaration of the parties' respective rights and duties under the Arkansas Trust Code and the Trust. Specifically, Plaintiffs seek a declaration that:

- a. the Trust is governed by Arkansas law;
- b. Plaintiffs are Beneficiaries of the Trust;
- c. the Trustee owes a fiduciary duty to the Beneficiaries of the Trust;
- d. the fiduciary duty owed to the Beneficiaries by the Trustee included not profiting from property in the Trust;
- e. the fiduciary duty owed to the Beneficiaries by the Trustee included not setting up arrangements with related entities which allowed those related entities to profit from property in the Trust or from the Beneficiaries of the Trust;
- f. the Trustee has violated its duties.

44. Under such declaration, the aforementioned conduct should be deemed unlawful and in material breach of the Arkansas Trust Code and the express terms of the Trust. Thereupon, the Court should order removal of the Trustee pursuant to Ark. Code Ann. § 28-73-1001(b)(7) and § 28-73-706(b)(1).

COUNT 2
Violation of the Arkansas Trust Code § 28-73-802
(Management Agreement with WVR)

45. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if set forth fully herein.

46. The Arkansas Trust Code requires that “[a] trustee *shall* administer the trust *solely* in the interests of the beneficiaries.” Ark. Code Ann. § 28-73-802(a) (emphasis added). A trustee has an obligation to avoid any transaction that is tainted by a potential conflict of interest.

47. The Arkansas Trust Code presumes any transaction between a corporate trustee and an entity related to the corporate trustee that involves trust property to be a self-dealing transaction affected by a conflict of interest:

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(4) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

Ark. Code Ann. § 28-73-802(c)(4).

48. The Trustee has violated Ark. Code Ann. § 28-73-802 by entering into transactions with affiliated entities involving Trust Properties.

49. Defendant violated Ark. Code Ann. § 28-73-802, by entering into a management agreement for the management of Trust Properties with its affiliate WVR.

50. Defendant entered into a management agreement with its affiliate WVR on January 1, 1996. The management agreement provides that WVR will manage and operate all Trust Properties. Further, the management agreement grants “all of the [Trustee’s] powers and authority” to WVR.

51. WVR receives a management fee from the Trustee in exchange for its services. These management fees are assessed against the Beneficiaries of the Trust and then paid to WVR under the terms of the management agreement.

52. The Trustee’s decision to allow its affiliate (WVR) to manage Trust Properties is not for the benefit of the Trust’s Beneficiaries.

53. The management agreement between the Trustee and WVR constitutes a self-dealing transaction in violation of Ark. Code Ann. § 28-73-802 because WVR and the Trustee are affiliated entities. As affiliated entities, the management agreement is presumed to be affected by a conflict of interest that financially harms Beneficiaries of the Trust, including Plaintiffs.

54. The Trustee’s self-dealing management agreement with WVR has resulted in Plaintiffs and other Trust Beneficiaries being harmed by paying excessive fees to the Trustee in order to enable the Trustee to pay its affiliate WVR.

55. The Trustee has neglected its duty of undivided loyalty to the Trust’s Beneficiaries by entering into this self-dealing agreement with an affiliated entity that involves Trust Properties.

56. As a result of the Trustee’s self-dealing in violation of Ark. Code Ann. § 28-73-802, Plaintiffs and members of the putative class have been financially harmed.

WHEREFORE, premises considered, Plaintiffs and members of the proposed class seek the protection and benefit of any and all remedies afforded under Ark. Code §§ 28-73-1001 and 28-73-1002 and pray for a judgment against the Trustee for, among other things, disgorgement of

profits, the tracing of trust property wrongfully disposed of and recovering the property or its proceeds, removal of the Trustee, compensatory damages in excess of the jurisdiction of this Court, for punitive damages, for costs of suit and for such other and further relief as the Court may deem just and proper.

COUNT 3
Violation of the Arkansas Trust Code § 28-73-802
(Financing Agreements)

57. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if set forth fully herein.

58. The Arkansas Trust Code requires that “[a] trustee *shall* administer the trust *solely* in the interests of the beneficiaries.” Ark. Code Ann. § 28-73-802(a) (emphasis added). A trustee has an obligation to avoid any transaction that is tainted by a potential conflict of interest.

59. The Arkansas Trust Code presumes any transaction between a corporate trustee and an entity related to the corporate trustee that involves trust property to be a self-dealing transaction affected by a conflict of interest:

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(4) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

Ark. Code Ann. § 28-73-802(c)(4).

60. The Trustee has violated Ark. Code Ann. § 28-73-802 by entering into transactions with affiliated entities involving Trust Properties.

61. The Trustee has violated Ark. Code Ann. § 28-73-802 by granting affiliated entities WVR and WCF the exclusive right to finance, re-finance, and service all loans taken by Beneficiaries of the Trust on Trust Properties.

62. All financed timeshare purchases are financed through the Trustee's affiliate WVR. The resulting loans are all serviced by the Trustee's affiliate WCF.

63. The Trustee's conduct in entering into agreements with WVR and WCF regarding the financing and servicing of Trust Properties violates Ark. Code Ann. § 28-73-802 because WVR and WCF are affiliated with the Trustee. As affiliated entities, the agreements between the Trustee and WVR and WCF are presumed to be affected by a conflict of interest.

64. As a result of the Trustee's self-dealing agreements with WVR and WCF in violation of Ark. Code Ann. § 28-73-802, Plaintiffs and members of the putative class have been financially harmed by being forced to pay excessive interest rates and loan servicing fees to WVR and WCF.

65. The Trustee has neglected its duty of undivided loyalty to the Trust's Beneficiaries by entering into this self-dealing agreement with affiliated entities that involves Trust Properties.

66. As a result of the Trustee's self-dealing in violation of Ark. Code Ann. § 28-73-802, Plaintiffs and members of the putative class have been financially harmed.

WHEREFORE, premises considered, Plaintiffs and members of the proposed class seek the protection and benefit of any and all remedies afforded under Ark. Code §§ 28-73-1001 and 28-73-1002 and pray for a judgment against the Trustee for, amongst other things, disgorgement of profits, the tracing of trust property wrongfully disposed of and recovering the property or its proceeds, removal of the Trustee, compensatory damages in excess of the jurisdiction of this Court,

for punitive damages, for costs of suit and for such other and further relief as the Court may deem just and proper.

COUNT 4
Violation of the Arkansas Trust Code § 28-73-802
(Securitization)

67. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if set forth fully herein.

68. The Arkansas Trust Code requires that “[a] trustee *shall* administer the trust *solely* in the interests of the beneficiaries.” Ark. Code Ann. § 28-73-802(a) (emphasis added). A trustee has an obligation to avoid any transaction that is tainted by a potential conflict of interest.

69. The Arkansas Trust Code presumes any transaction between a corporate trustee and an entity related to the corporate trustee that involves trust property to be a self-dealing transaction affected by a conflict of interest:

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(4) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

Ark. Code Ann. § 28-73-802(c)(4).

70. The Trustee has violated Ark. Code Ann. § 28-73-802 by entering into transactions with affiliated entities involving Trust Properties.

71. The Trustee allows its affiliate WVR to securitize large pools of consumer time share loans which it then sells. The income generated by this securitization practice is used to finance WVR’s operations. The security for the pools consists of timeshare loans on Trust Properties.

72. None of the income from the securitization agreements is shared with the Trust's Beneficiaries, including Plaintiffs.

73. The securitization practice places the interest of the Trustee and its affiliate in direct conflict with the Trust's Beneficiaries. The securitization practice motivates the Trustee and its affiliates to finance timeshare purchases made by the Trust's Beneficiaries at above-market interest rates. These above-market interest rate loans are more enticing to outside investors because of the potentially large returns on investment.

74. The Trustee's conduct in facilitating the securitization practices violates Ark. Code Ann. § 28-73-802 because WVR is affiliated with the Trustee and the securitization agreements involve Trust Properties. As affiliated entities, the agreements between the Trustee and WVR are presumed to be affected by a conflict of interest.

75. The Trustee has neglected its duty of undivided loyalty to the Trust's Beneficiaries by entering into this self-dealing agreement with an affiliated entity that involves Trust Properties.

76. As a result of the Trustee's self-dealing in violation of Ark. Code Ann. § 28-73-802, Plaintiffs and members of the putative class have been financially harmed.

WHEREFORE, premises considered, Plaintiffs and members of the proposed class seek the protection and benefit of any and all remedies afforded under Ark. Code §§ 28-73-1001 and 28-73-1002 and pray for a judgment against the Trustee for, amongst other things, disgorgement of profits, the tracing of trust property wrongfully disposed of and recovering the property or its proceeds, removal of the Trustee, compensatory damages in excess of the jurisdiction of this Court, for punitive damages, for costs of suit and for such other and further relief as the Court may deem just and proper.

COUNT 5
Violations of the Arkansas Trust Code § 28-73-1003

76. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if set forth fully herein.

77. The Arkansas Trust Code prohibits a trustee from profiting in its role as trustee.

78. Arkansas Trust Code § 28-73-1003 expressly prohibits a trustee from profiting from the use of trust property, even absent a breach of trust.

79. The Trustee has violated Ark. Code Ann. § 28-73-1003 by accumulating a positive trust fund balance through excess fees and revenue collected from Plaintiffs and the class. The Program Fee paid by Plaintiffs and the class constitutes some or all of the Trust's fund balance. This surplus trust fund balance is currently held by Defendant exclusively for its own use.

80. Despite accumulating substantial profits from the Trust and holding those funds for its own use, Defendant continues to increase the amount of fees and revenues it collects from Plaintiffs and the class. None of the surplus trust fund balance held by the Trustee has been shared with or credited to Plaintiffs or the class; even though, all of the surplus trust fund balance was generated from revenue received from the Trust's Beneficiaries.

81. The Trustee's conduct in profiting from the Trust's Beneficiaries and holding the profits for its own use violates Ark. Code Ann. § 28-73-1003.

82. As a result of the Trustee's violation of Ark. Code Ann. § 28-73-1003, Plaintiffs and members of the putative class have been financially harmed.

WHEREFORE, premises considered, Plaintiffs and members of the proposed class seek the protection and benefit of any and all remedies afforded under Ark. Code §§ 28-73-1001 and 28-73-1002 and pray for a judgment against the Trustee for, among other things, the tracing of trust property wrongfully disposed of and recovering the property or its proceeds, disgorgement

of profits, removal of the Trustee, compensatory damages in excess of the jurisdiction of this Court, for punitive damages, for costs of suit and for such other and further relief as the Court may deem just and proper.

COUNT 6
Breach of Fiduciary Duty

83. Plaintiffs adopt and incorporate the factual allegations contained in paragraphs 1 through 38, as if set forth fully herein.

84 By virtue of serving as the Trustee, Defendant owes a fiduciary duty to the Beneficiaries of the Trust.

85. The Trustee breached its fiduciary duty by:

- (a) permitting an affiliated entity, WVR, to finance and re-finance Trust Properties;
- (b) allowing an affiliated entity, WVR, to serve as the Plan Manager for the Trust;
- (c) allowing an affiliated entity, WCF, to service loans involving Trust Properties;
- (d) entering into a management agreement with an affiliated entity, WVR;
- (e) allowing an affiliated entity, WVR, to securitize loans on Trust Properties for its own benefit;
- (e) exempting an affiliated entity, WVR, from paying certain fees including the Fairshare Plus Assessment;
- (f) collecting excessive fees, including the Program Fee, and failing to return any surplus Trust Fund Balance to the Beneficiaries of the Trust;
- (g) by failing to share profits from the Trust with the Beneficiaries of the Trust.

86. The Trustee consciously and deliberately disregarded the duty it owed to Plaintiffs and the Beneficiaries of the Trust.

87. As a proximate consequence of said breaches, Plaintiffs and members of the putative class have suffered the financial losses described above.

WHEREFORE, premises considered, Plaintiff and members of the proposed class pray for a judgment against the Trustee for compensatory damages in excess of the jurisdiction of this Court, for punitive damages, for costs of suit and for such other and further relief as the Court may deem just and proper.

Dated: October 8, 2020

Respectfully submitted,

/s/ John A. Yanchunis
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CERTIFICATE OF SERVICE

I certify that on October 8, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, to be served on the following:

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/s/ John A. Yanchunis

EXHIBIT A

**SECOND AMENDED AND RESTATED
FAIRSHARE VACATION PLAN USE MANAGEMENT TRUST AGREEMENT**

THIS SECOND AMENDED AND RESTATED FAIRSHARE VACATION PLAN USE MANAGEMENT TRUST AGREEMENT (this "Trust Agreement") is effective as of the 14th day of March, 2008, by and among Fairshare Vacation Owners Association, an Arkansas nonprofit corporation; Wyndham Vacation Resorts, Inc., a Delaware corporation, Fairfield Myrtle Beach, Inc., a Delaware corporation, and such other subsidiaries and affiliates of Wyndham Vacation Resorts, Inc. as may from time to time subject Property Interests (or the Use Rights therein) to this Trust Agreement; and such other unrelated third parties as may from time to time desire to subject Property Interests (or the Use Rights therein) to this Trust Agreement, all in accordance with the terms and conditions set forth herein, and amends and restates the "Amended and Restated Trust Agreement" (as hereinafter defined) which, in turn, amended and restated the "Original Trust Agreement" (as hereinafter defined).

WHEREAS, Wyndham is the developer of certain resort communities and Vacation Plans with respect to which Wyndham sells timeshare and other interests; and

WHEREAS, Wyndham desires to establish a trust to permit the Beneficiaries to use and exchange the Use Rights available through the Trust; and

WHEREAS, Persons that (i) subject one or more Property Interest(s) to this Trust Agreement by an assignment to the Trust of the Use Rights attributable to such Property Interest(s), or (ii) purchase one or more Property Interests which have previously been subjected to this Trust Agreement, shall be allocated Points symbolic of the Use Rights and other attributes of their respective Property Interest(s) and shall be permitted to use their symbolic Points as described herein; and

WHEREAS, the Points allocated to a Member may be used to reserve Trust Properties pursuant to the procedures described in this Trust Agreement and the FairShare Plus Member's Directory; and

WHEREAS, the Trustee has agreed to develop, or contract with a third party to provide, a reservation system to enable Members to reserve the use of the Trust Properties; and

WHEREAS, the parties have agreed that the Trustee, as an administrative convenience to the Members, will (i) collect fees due from each Member to the owner's association or associations established with respect to such Member's Property Interest or if there is no such association, then the fees due to the operator or manager of the Vacation Plan creating such Property Interest, (ii) hold such fee in escrow on behalf of each such Member and (iii) remit such fee to the appropriate owners association or associations or operator(s)/manager(s), as the case may be, when such Member would be obligated to make payment thereof; and

WHEREAS, the Trust may, from time to time or at some future time, hold legal or equitable title to, or the Use Rights associated with, some or all of the Trust Properties; and

WHEREAS, from time to time, other subsidiaries of Wyndham and/or third parties may, with the written consent of Wyndham and Trustee, subject Property Interests or the Use Rights therein to this Trust Agreement; and

WHEREAS, Wyndham shall have the right (but not the obligation) to cause this Trust Agreement to be recorded in the various states and counties in which the Property Interests may be located or if recording is not appropriate based upon the nature of the Property Interest, then Wyndham shall have the right (but not the obligation) to cause this Trust Agreement to be filed, lodged or published in such other appropriate office or with any other appropriate governmental or quasi-governmental office or agency (hereinafter collectively called "Filing Offices") applicable to the Property Interests which are being subjected to this Trust Agreement by an assignment to the Trust of the Use Rights in such Property Interest(s).

NOW, THEREFORE, Wyndham and the Trustee hereby enter into this Trust Agreement and each Member and/or third party shall be deemed to have accepted and agreed to be bound by this Trust Agreement at the time their respective Property Interests or the Use Rights therein are subjected to the terms and conditions of this Trust Agreement by an assignment of Use Rights, or upon execution of a contract for the purchase of a Property Interest which has been previously subjected to this Trust Agreement or upon execution of such other documents as may be acceptable to the Trustee.

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Accommodation" means a Vacation Unit that has been, or the Use Rights with respect to which have been, subjected to this Trust Agreement. If a Property Interest (or the Use Rights therein) that has been subjected to this Trust Agreement (either directly or through an assignment to the Trust of the Use Rights therein), constitutes something other than a Vacation Unit (or the Use Rights therein) (such as, for example, a Property Interest that is a membership in a multi-site Vacation Plan), then **"Accommodation"** shall mean a Vacation Unit available through the Property Interest or Use Rights therein that has been so subjected to this Trust Agreement.

"Amended and Restated Trust Agreement" means that certain Amended and Restated Fairshare Vacation Plan Use Management Trust Agreement dated as of January 1, 1996 by and among Wyndham, the Association and Third Parties, as amended by a First Amendment to the Amended and Restated Fairshare Vacation Plan Use Management Trust Agreement dated as of February 29, 2000 and a Second Amendment to the Amended and Restated Fairshare Vacation Plan Use Management Trust Agreement dated as of February 19, 2003.

"Annual Lodging Point Value" means the sum of the Points required for occupancy of an Accommodation for an entire year.

"Assignment Agreement" shall mean that provision in a Member's Purchase Agreement, the FairShare Vacation Ownership Assignment Agreement or other document whereby a Property Interest is, or the Use Rights in a Property Interest are, subjected to the conditions and restrictions of this Trust Agreement (by an assignment or other conveyance to the Trust of the Use Rights in such Property Interest) and assigned a number of Points.

"Association" means the Fairshare Vacation Owners Association, an Arkansas non-profit corporation.

"Beneficiaries" means the beneficiaries of this Trust Agreement, which beneficiaries shall include the Members, the Association, the Plan Manager, Wyndham and the Third Parties.

"Board" or **"Board of Directors"** shall mean the Board of Directors of the Association.

"Directory" means the FairShare Plus Member's Directory which describes the Trust Properties and the terms and conditions of the FairShare Vacation Plan, as may be amended, supplemented, updated and/or replaced from time to time. Subject to the right of Wyndham under Section 11.01 below, the Plan Manager, with the consent of the Trustee, will, from time to time, issue the Directory and revisions thereof and supplements thereto.

"Escrow Account" means the account established by the Trustee into which the OA Fees paid by the Members are deposited.

"FairShare Plus Assessment" means the annual fee paid to the Trustee by a Member. The FairShare Plus Assessment consists of the Program Fee and the OA Fee.

"Governing Instruments" means the documents and instruments that create a Vacation Plan and the Property Interests therein and govern the use of Property Interests and the occupancy of Accommodations pursuant to said Vacation Plan and may include, without limitation, articles of incorporation for any OA; by-laws for the OA; rules and regulations concerning operation of the Vacation Plan, the use of Property Interests therein and/or the occupancy of Accommodations thereunder; any declaration of covenants, conditions and restrictions and grant of easements encumbering the Property Interests in the Vacation Plan and any master trust agreement to which any Property Interest (or the Use Rights therein) subject to this Trust Agreement is also subject.

"Member" means Wyndham and the holder of a right to occupy an Accommodation as a consequence of such holder having his Property Interests (or the Use Rights therein) subjected to this Trust Agreement, and such holder's heirs, and permitted successors and assigns. Wyndham may also be a Member to the extent it has subjected Property Interests (or the Use Rights therein) to this Trust Agreement which have not yet been sold; provided, however, Wyndham is not required to pay any OA Fees or Program Fees except as provided by Section 11.08 of this Trust Agreement. Each Member of the FairShare Vacation Plan shall also be a **"Member"** of the Association with the voting and other rights in the Association as are established and governed by the Articles of Incorporation and By-Laws of the Association.

"Membership" means the relationship of a Member to the FairShare Vacation Plan and the bundle of rights, duties and benefits, including, without limitation, the Points, a Member receives by reason of his Property Interest (or the Use Rights therein) having being subjected to this Trust Agreement. It also means the relationship of a Member to the Association and the bundle of rights, duties and benefits a Member receives by reason of being a "Member" in the Association.

"OA" means an underlying condominium, townhouse or timeshare homeowners association, master association or community club/association in which the owners of Property Interest therein become members, as well as any other type of association (whether or not incorporated) of owners of Property Interests and includes, without limitation, the owners association for a multi-site real or personal property based Vacation Plan. If the Governing Instrument(s) for a Vacation Plan do not require the establishment of an association or similar owners organization for the owners of Property Interests therein, then "OA" shall mean the operator and/or manager of that Vacation Plan.

"OA Fees" means the annual fee or fees due from each Member in respect of his Property Interest which fees shall be paid by the Member to, and held in escrow in accordance with the terms of this Trust Agreement by, the Trustee and which fees include all recreation, maintenance and reserve fees and assessments that a Member is obligated to pay on an annual basis in respect of his Property Interest that was subjected (either directly or by reason of the assignment to the Trust of the Use Rights in such Property Interest) to this Trust Agreement. "OA Fees" also mean all amounts due to the operator or manager of a Vacation Plan where no association of owners therein has been or is intended to be established representing fees and assessments that are imposed on an annual basis to cover the cost of operation of such Vacation Plan, including maintenance, repair and/or replacement of the Vacation Units in that Vacation Plan.

"Plan" means the FairShare Vacation Plan established by this Trust Agreement. The Plan is also known as the FairShare Plus Program.

"Plan Manager" means the manager of the FairShare Vacation Plan, its successors and permitted assigns.

"Points" means the symbolic value allocated to a Member in connection with such Member's Membership in the Plan and is based upon the Property Interest (or Use Rights in such Property Interest) which such Member caused to be subjected to this Trust Agreement. "Points" also means the symbolic value assigned to the right to occupy an Accommodation.

"Program Fee(s)" shall mean the fees payable to the Trustee under Article X below by the Members for the expenses incurred in connection with the operation and administration of the Plan which includes, among other things, operation and administration of the Trust and the Association and operation, maintenance, repair and replacement of the Trust Properties.

"Program Fund" means the account or accounts in which the Program Fee is deposited to pay the expenses incurred in connection with the operation and administration of the Plan.

"Property Interest" means an interest in a Vacation Unit or in a Vacation Plan or an undivided interest in one or more Vacation Units, each of which interests or the Use Rights therein is/are subjected to this Trust Agreement and such interest is (i) a fixed or floating timeshare interval, as defined in the applicable Governing Instrument(s), (ii) an estate for years, with or without a remainder over with other owners, (iii) a leasehold "right to use" interest, (iv) an interest in a multi-site Vacation Plan, or (v) such other type of interest as Trustee may elect to accept from time to time, in Trustee's sole discretion. A "Property Interest" may be an interest in any type of property, including real, personal, mixed or otherwise.

"Purchase Agreement" means any documents evidencing the purchase of a Property Interest by a Member.

"Recording Office" means the appropriate local clerk's office in any county in which any of the Property Interests which constitute real property are located.

"Third Party" or "Third Parties" means all individuals or entities not affiliated with Wyndham who develop Property Interests for sale to the public and who subject such Property Interests (or the Use Rights in such Property Interests) to this Trust Agreement.

"Trust" means the trust established by this Trust Agreement, as amended from time to time.

"Trust Properties" means all Property Interests subjected to this Trust Agreement and all Use Rights in Property Interests conveyed, assigned or subjected to this Trust Agreement in accordance with the terms of this Trust Agreement, which conveyance/assignment includes all rights and privileges appurtenant to each such Property Interest. Trust Properties may further include personal property and/or services used in connection with the Property Interests or the Use Rights therein or otherwise made available to the Members and all substitutions, replacements and/or proceeds therefrom. Property Interests (and/or the Use

Rights in such Property Interests) may be added to the Trust Properties from time to time by Wyndham, the Plan Manager or the Trustee. Among other things, the Trust Properties shall not include the Program Fees, the OA Fees or the Plan Manager's reservation system.

"Trustee" means Fairshare Vacation Owners Association, any substitute trustee, or its successors and assigns.

"Use Rights" shall mean those rights a Member has to use, occupy and/or possess a Vacation Unit as a consequence of the ownership of a Property Interest in a Vacation Plan which includes that Vacation Unit.

"Vacation Plan" means any arrangement, plan, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, shareholders agreement, partnership or joint venture agreement, or limited liability company/operating agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use a Vacation Unit or a group of Vacation Units (which may be located in one site or at a number of sites) and in any event, the facilities, if any, that are appurtenant to each such Vacation Unit, for a period of time less than a full year during any given year, but not necessarily for consecutive years.

"Vacation Unit" means (i) an apartment, condominium or cooperative unit, townhouse unit, house, cabin, lodge, hotel or motel room, mobile home, recreational vehicle, houseboat, cabin of a ship, pleasure yacht or other private or commercial vessel, vehicle or structure designed and available for use and suitable for overnight lodging for one or more individuals or (ii) a campsite designed and suitable for providing overnight parking and utility services for a recreational vehicle.

"Voting Designee" means the person or entity, its successors or assigns, who has been designated by a Member, to exercise such Member's voting privileges in his OA.

"Voting Member" is the person or entity designated on behalf of multiple owners of a Membership to exercise the vote of such multiple owners in the Association.

"Wyndham" means Wyndham Vacation Resorts, Inc., a Delaware corporation, formerly known as Fairfield Resorts, Inc. and before that, as Fairfield Communities, Inc.; Fairfield Myrtle Beach, Inc., a Delaware corporation, and such other subsidiaries and affiliates of Wyndham Vacation Resorts, Inc. that may from time to time desire to subject Property Interests or the Use Rights therein to this Trust Agreement in accordance with the terms and conditions set forth herein. Wyndham Vacation Resorts, Inc., f/k/a Fairfield Resorts, Inc., is the successor by merger to Fairfield Harbor, Inc., Fairfield in the Carolina's, Inc., Fairfield Ocean Ridge, Inc., Fairfield Pagosa, Inc., Fairfield Plantation, Inc., Fairfield Williamsburg, Inc., and Fairfield Ventura, Inc.

ARTICLE II

DECLARATION AND TITLE, PURPOSE AND EFFECTIVE DATE OF TRUST

2.01 **Declaration and Title of the Trust.** Effective as of the 26th day of June, 1991, there was established a Trust, which Trust is irrevocable during the time any Member has a right to occupy an Accommodation as a consequence of his Property Interest or the Use Rights in his Property Interest being subjected to the terms of this Trust Agreement and which Trust shall be known as the "FairShare Vacation Plan Use Management Trust". The Trust shall hold the Trust Properties on behalf of the Beneficiaries, all for the use and purposes as set forth in this Trust Agreement.

2.02 **Purpose of the Trust.** The purpose of the Trust shall be to secure for the Beneficiaries their respective rights and interests as set forth in this Trust Agreement and in the Purchase Agreements and/or Assignment Agreements executed by the Members.

2.03 **Governing Law.** This Trust Agreement shall be deemed an Arkansas Trust and shall be governed by the laws of the State of Arkansas.

ARTICLE III

BENEFICIARIES

3.01 **Interest of Beneficiaries.** The interest of a Beneficiary under this Trust Agreement shall consist of the rights set forth in this Trust Agreement. No Beneficiary shall have any right of partition as to any real or personal property held in Trust hereunder except for the right of each Member to have his respective Property Interest (or the Use Rights therein)

reconveyed (a) upon termination of the Trust, if applicable, and (b) with respect to each Member who subjected his Property Interest (or the Use Rights therein) to this Trust pursuant to an Assignment Agreement, upon any termination of his Membership in the Plan in accordance with the terms of his Assignment Agreement. The death of a Beneficiary shall not terminate this Trust nor in any manner affect the powers of the Trustee.

3.02 **Beneficiary Acts.** No Beneficiary, in his/her/its capacity as a beneficiary of the Trust, shall have the authority to contract for or in the name of the Trust or any other Beneficiary or to bind the Trust or any Beneficiary.

3.03 **Assignment.** Until the Trustee receives written notice of an assignment or transfer, by operation of law or otherwise, to the Trust from a Member of his Property Interest or the Use Rights therein, or of any other event upon which such Property Interest hereunder may depend, the Trust shall not be liable for any assignments or transfers with respect to such Property Interest or Use Rights or other action which would have been proper prior to such assignment or other transfer, or other event, unless such action is done in bad faith.

3.04 **Wyndham.** Wyndham, in its capacity as the developer of resort communities and Vacation Plans, shall have the right to sell Property Interests to purchasers who, after such purchase, voluntarily elect to subject such Property Interests (or the Use Rights therein) to this Trust Agreement or to sell Property Interests which have been subjected to this Trust Agreement prior to such sale, in either case for cash or other terms acceptable to Wyndham. With respect to the Property Interests subjected to this Trust Agreement which it owns (and therefore prior to the sale thereof by Wyndham), Wyndham, as such developer, may finance, with one or more lenders, such Property Interests, and may deliver to any such lender, deeds of trust, mortgages or other security instruments or liens against such Property Interests. Wyndham, as such developer, may also pledge to one or more lenders the Purchase Agreements or promissory notes given by Members secured by UCC-1 Financing Statements, mortgages, deeds of trust, or other security instruments. Any such liens or security interests shall contain subordination language which subordinates the lenders' interest in the Property Interest encumbered by such lien or security interest to that of the Member so long as such Member is not in default of the contractual obligations under the Member's Purchase Agreement or promissory note.

ARTICLE IV

ASSETS

4.01 **Trust Properties.** The assets of the Trust shall be the Trust Properties. Neither the OA Fees held in escrow pursuant to Article X, the Program Fees nor the reservation system owned by the Plan Manager shall be part of the Trust Properties.

4.02 **Allocation of Points.** For administrative convenience in operation of the Plan, the Plan Manager, on behalf of the Trustee, has established or will establish Point values for use of the Trust Properties. The Points assigned to a Property Interest or the Use Rights therein are based on the location, size, season, capacity, furnishings, demand, cost to acquire, build and maintain and other features of the Accommodation or Accommodations available as a part of such Property Interest, as well as other factors that may affect the experience of occupancy of such Accommodation or Accommodations (such as, holidays, ski seasons and local events). When a Property Interest or the Use Rights therein is/are subjected to this Trust Agreement, it will be allocated Points by the Plan Manager, on behalf of the Trustee. The total number of Points required to reserve all Accommodations available in respect of all of the Property Interests (or Use Rights therein) that have been subjected to this Trust Agreement during all use days shall always equal or exceed the total number of Points allocated to all of the Members.

4.03 **Adjustment of Point Allocation.** The ownership interest of a Member in a Property Interest subjected to this Trust Agreement (by assignment of the Use Rights therein or otherwise) as stated in such Member's Purchase Agreement or FairShare Vacation Ownership Assignment Agreement may not be changed. However, from time to time the Plan Manager, on behalf of the Trustee, may adjust the number of Points required to reserve an Accommodation available through a Property Interest in order to respond to actual use patterns and changes in use demand. Any increase or decrease in the total number of Points required to reserve such Accommodations shall also result in a pro-rata increase or decrease in the number of Points allocated to all Members that own the Property Interests through which such Accommodations are available (including Wyndham or such other applicable Third Party if all Property Interests in the applicable Vacation Plan which have been subjected to this Trust Agreement have not yet been sold). However, any such adjustments made by the Plan Manager, on behalf of the Trustee, shall not result in an increase or decrease in the number of the Points assigned to an Accommodation in one season of a year by more than twenty percent (20%), unless those Members entitled to cast a majority of the votes of all Members present, in person or by proxy, at an annual or special meeting of the Members of the Association held in accordance with the terms and provisions of the By-Laws of the Association vote for such increase or decrease in the number of Points assigned to such Accommodation.

ARTICLE V

**TERMINATION OF THE TRUST, WITHDRAWALS,
ADDITIONS, SUBSTITUTIONS, AND TERMINATION OF POINTS**

5.01 **Termination.** Unless terminated in accordance with the terms hereof or not extended as provided for in Section 14.09 below, the Trust and this Trust Agreement shall terminate on December 31, 2025. Upon any termination of the Trust, the Association shall be dissolved and the following shall occur:

(a) The Trustee shall cause all Use Rights to be reconveyed to the assigning Member or his successors or assigns, if such Use Rights were assigned to the Trust after the Member acquired the corresponding Property Interest;

(b) The Trustee shall take all steps necessary to release from the encumbrance of this Trust Agreement all Property Interests whose Use Rights were subjected to this Trust Agreement by Wyndham prior to being sold by Wyndham;

(c) The Board of Directors of the Association shall convert all non-cash assets of the Association and the Trust (other than the individual Members' Use Rights and Property Interests) to cash and that cash, together with all amounts then in the Program Fund, shall be used to pay the outstanding costs and expenses of the Trust and the Association, including all costs and expenses incurred in connection with the termination of the Trust and the dissolution of the Association, and to establish any reserves which the Board deems appropriate to cover any additional costs and expenses to be incurred with the balance to be distributed to the Members on a pro-rata basis based upon the number of Points owned by each Member; and

(d) The Board shall cause any surplus then held in the Escrow Account (representing amounts collected as OA Fees from the Members) to be returned to the depositing Member(s) thereof and shall advise each of the OAs that it will no longer be collecting and remitting to it OA fees paid by Members who are also members of that OA.

5.02 **Withdrawal of Property Interests.** The Trustee may withdraw a Property Interest or the Use Rights therein from this Trust Agreement and cancel the Points allocated to any Member owning such Property Interest by executing an appropriate withdrawal document and if necessary, recording it in the Recording Office or, if appropriate, filing it in the Filing Office, under any one of the following conditions:

(a) **Default Under Purchase Agreement.** If a Purchase Agreement for a Property Interest is cancelled due to default or if a mortgage, deed of trust or other security interest encumbering a Property Interest is foreclosed as a result of the Member owning such Property Interest defaulting thereunder, the Trustee, upon the direction of Wyndham or the Third Party who completed such foreclosure, shall execute the documents necessary to (i) cancel the Assignment Agreement and withdraw the Property Interest/Use Rights from this Trust Agreement, where the Property Interest/Use Rights was/were subjected to this Trust Agreement after being acquired by the Member or (ii) terminate the Membership of the defaulting Member where such Member's Property Interest/Use Rights was/were subjected to this Trust Agreement prior to being acquired by the Member. In the event of a cancellation or termination due to default, the defaulting Member (A) shall forfeit all previously paid FairShare Plus Assessments (with all OA fees not theretofore paid to the applicable OA to be forwarded to such OA), (B) shall no longer have any right to participate in the Plan and (C) shall no longer be a Member of the Plan or of the Association.

(b) **Changed Circumstances.** If the Trustee, in its discretion, has determined that a Property Interest (or Use Rights therein) should be withdrawn due to circumstances that render the Accommodation(s) applicable to such Property Interest unsuitable for continued use in the Plan, the Trustee shall have the authority to cause such Property Interest/Use Rights to be withdrawn from this Trust Agreement and to cause all Points attributable to the withdrawn Property Interest/Use Rights to be canceled and the Members owning such withdrawn Property Interest/Use Rights shall no longer have the right to participate in the Plan and shall no longer be Members of the Association. The Trustee shall execute any and all documents necessary to reconvey the Use Rights and/or transfer title to the withdrawn Property Interest to the appropriate Member or Wyndham, if necessary.

(c) **Destruction, Condemnation or Temporary Loss of Use.** If the Use Rights in one or more Property Interests are, in the Trustee's discretion, (i) permanently no longer suitable for use in the Plan as the result of one or more Accommodations available through that or those Property Interests having been condemned or such Accommodations are destroyed or damaged and the OA, pursuant to the Governing Instruments establishing said Property Interests, elects not to rebuild or restore the affected Accommodations, then (A) the Trustee shall withdraw the applicable Property Interest(s)/Use Rights from this Trust Agreement (and if applicable, reconvey said Property Interests(s)/Use Rights to the corresponding Members) and cancel, by written notice to such Members, the Points

attributable to such Property Interest(s)/Use Rights; (B) such Members shall no longer have any right to participate in the Plan and shall no longer be Members in the Association; (C) the Trustee shall cause any surplus then held in the Escrow Account which represents amounts collected from such Members to be returned to them, but such Members shall have no right to any Program Fees that they have previously paid; and (D) if the Trustee receives any funds on account of such condemnation or damage/destruction, the Trustee shall, to the extent such funds exceed the Trustee's costs in achieving the withdrawal of the Property Interest(s)/Use Rights from the Plan and cancellation of the Membership(s), distribute the excess to such Members on a pro-rata basis; or (ii) temporarily not suitable for use in the Plan as a result of one or more Accommodations available through that or those Property Interests having been rendered unoccupiable as a result of damage or destruction where the OA, pursuant to the Governing Instruments establishing said Property Interests, has elected to re-build, restore or repair, as applicable, the affected Accommodations or as a result of the OA undertaking a significant renovation of the Accommodations which results in such Accommodations not being available for use by all of the owners of Property Interests in such affected Accommodations and in any such case, the applicable OA is not providing alternative Accommodations to the owners of Property Interests therein during the period of unavailability, then the Trustee shall use commercially reasonable efforts to obtain the right to occupy substitute Accommodations in the area where the affected Accommodations are located which substitute Accommodations may become Trust Properties on either a temporary or permanent basis and shall have Annual Lodging Point Values equal to or greater than the Annual Lodging Point Values of the affected Accommodations.

(d) **Termination or Partition.** If a Vacation Plan is terminated or one or more Property Interests in a Vacation Plan are partitioned pursuant to the Governing Instruments establishing said Vacation Plan, the Points in the Plan attributable to the Property Interests in such terminated Vacation Plan or the Property Interests (or Use Rights therein) affected by such partition shall be removed from the Plan and the Members owning such terminated or partitioned Property Interests shall no longer have the right to participate in the Plan and shall no longer be Members of the Association.

(e) **Expiration.** If a Property Interest which is a leasehold interest or "right to use" interest expires, the Members owning Points associated with such expired Property Interests shall have no further right to participate in the Plan and shall no longer be Members of the Association and the Points associated with such expired Property Interests shall be cancelled.

(f) **Wyndham Withdrawal.** Wyndham may withdraw Accommodations applicable to Property Interests subjected by Wyndham to this Trust Agreement if no such Property Interests have been sold or Wyndham has reacquired all previously sold Property Interests.

5.03 **Addition of Accommodations.** Wyndham, in its capacity as the developer of resort communities and Vacation Plans, may, from time to time, in its sole and absolute discretion, (a) cause the Property Interests in additional Accommodations, interests or rights in other real or personal property and/or rights in or to services to be transferred or otherwise made available to the Members through the Plan and (b) as noted in Section 3.04 above, cause such resort communities and Vacation Plans to enter into affiliation arrangements with the intention that either (i) the purchaser of a Property Interest therein would have the right, on a voluntary basis, to assign the Use Rights therein to the Trust after such purchase or (ii) the Property Interests therein would have been previously subjected to this Trust Agreement and therefore, the purchaser thereof would automatically become a Member, all of such actions to occur without the consent of any of the other Members or the Trustee; but under no circumstances shall Wyndham be required to make any such transfers. The addition to the Plan of Property Interests (or the Use Rights therein) in Accommodations, interests or rights in other real and personal property and/or rights in or to services may result in the addition of new Members who will compete with existing Members in making reservations for the use of the Trust Properties, and may also result in an increase in the Program Fee.

5.04 **Substitutions.** Wyndham, in its capacity as the developer of resort communities and Vacation Plans, and the Trustee may, from time to time, in their sole and absolute discretion, substitute Property Interests in Vacation Units, rights or interests in other real or personal property and/or rights in or to other services for Property Interests in Accommodations, rights or interests in real or personal property available through the Plan and/or rights in or to services available through the Plan, so long as the Property Interests in the Accommodations, the rights or interests in other real or personal property and/or the rights in or to services which are being withdrawn are not owned by any Member (other than Wyndham). The determination of whether to substitute will be based on the use by the Members of the Accommodations, the other real or personal property and/or the services to be withdrawn, the availability of similar property in the same general vicinity or of the same general quality or utility as the property being withdrawn, the availability of services substantially the same or better than the services being withdrawn, the age of the Accommodations, the other real or personal property and/or the services being withdrawn, the expenses incurred in connection with maintaining the Accommodations, the other real or personal property and/or services being withdrawn and such other factors as may be determined by Wyndham and/or the Trustee from time to time. The Members have no right to consent to the substitution of Property Interests in other Vacation Units, interests in other real or personal property and/or rights in or to

other services for Property Interests relating to existing Accommodations, interests in real or personal property then available through the Plan and/or rights in or to existing services. The replacement Trust Properties shall provide Members with an opportunity to enjoy a substantially similar experience as was available with the replaced Trust Properties. In determining whether the replacement Trust Properties will provide a substantially similar experience, all relevant factors will be considered, including, but not limited to, some or all of the following: size, capacity, furnishings, maintenance, location (geographic, topographic, and scenic), demand and availability for Member use, quality and availability of a service, and recreational capabilities.

ARTICLE VI

DUTIES AND OBLIGATIONS OF THE TRUSTEE

6.01 **Duties and Obligations.** The Trustee shall, without limiting the other duties and obligations set forth in other provisions of this Trust Agreement, provide the following services with respect to the Trust:

(a) **Ownership.** The Trustee shall, on behalf of the Trust, accept and hold ownership of the Trust Properties for the beneficial use of each Member. In the event ownership to any Property Interest is transferred to the Trust, said Property Interest shall be subject in all respects to the provisions of this Trust Agreement. The Trustee shall have no equitable rights in any of the Property Interests or Use Rights subjected to this Trust Agreement nor any right to the income or profits to be derived from the sale of any Property Interests owned by the Trust. The Trustee will not, without the consent of Wyndham, accept on behalf of the Trust, Property Interests or Use Rights from any person or entity other than Wyndham.

(b) **Liens.** The Trustee shall use reasonable efforts to ascertain that at the time a Property Interest or the Use Rights therein is/are subjected to this Trust Agreement that either (i) no liens affect such Property Interest which would prevent the use by the Members of the Accommodation(s) available in respect of that Property Interest, or (ii) in the case there is such a lien, (A) the holder of any lien has agreed that such lien is subordinated to the rights of a Member that satisfies the terms of his Purchase Agreement, mortgage, deed of trust and/or other security instrument, and (B) the holder of any blanket lien has entered into a non-disturbance instrument pursuant to which such holder agrees that a Member that satisfies the terms of his Purchase Agreement, mortgage, deed of trust and/or other security agreement shall be entitled to exercise the Use Rights attributable to such Property Interest pursuant to the terms of this Trust Agreement; provided, however, the Trustee may, on behalf of the Trust, accept Property Interests or the Use Rights therein that do not satisfy such conditions if, in the Trustee's sole discretion, the failure to satisfy such conditions with respect to such Property Interests does not materially adversely affect the total availability of Accommodations to the Members.

(c) **Recording of Trust Agreement.** The Trustee shall have the right, but not the obligation, to record or cause to be recorded in the Recording Office and to file or cause to be filed, as appropriate, in any Filing Office a copy of this Trust Agreement and the appropriate amendments or addendums thereto and shall take such steps as are required by law to assure that notice of the terms and provisions of this Trust Agreement, as amended from time to time, is given in all jurisdictions where any Trust Properties held by the Trust are located and where the giving of such notice is necessary to protect the interests of the Beneficiaries in such Trust Properties.

(d) **Accounting.** The Trustee shall cause the Plan Manager to maintain the information necessary to enable reports covering the following information to be prepared from time to time: (1) the inventory of the Trust Properties and the cumulative number of Points represented by the Trust Properties; (2) the cumulative number of Points allocated to Property Interests/Use Rights; and (3) all financial transactions, if any, of the Trust. The Trustee has the right (but not the obligation) to employ, from time to time, at the expense of the Association, an independent accounting firm for such purposes related to the administration or operation of the Plan (including the administration and operation of the Trust and the Association) as the Trustee deems appropriate.

(e) **Property Maintenance.** Trustee shall provide for the maintenance, repair, and replacement of all Accommodations, including, without limitation all personal property located in the Accommodations, available in respect of all Property Interests (or the Use Rights therein) that have been subjected to this Trust Agreement from time to time, if the applicable OA, if any, is not obligated to provide such maintenance, repair and replacement.

(f) **Tax Returns.** Trustee shall cause to be prepared and filed on behalf of the Trust all state and federal income tax returns.

(g) **Member List.** Trustee shall maintain a record of the names and addresses of, and the number of Points held by, all Members and the cumulative number of Points allocated to the Trust Properties.

(h) **Insurance.** The Trustee shall cause to be maintained adequate insurance on the Trust Properties against fire and other unavoidable casualties if the applicable OA, if any, is not obligated to provide such insurance. The Trustee shall hold any insurance proceeds received from such insurance pending the reconstruction of an Accommodation or the acquisition of a replacement Accommodation. Subject to the last sentence of this Section 6.01(h), the Trustee shall be responsible for reconstruction of the Accommodation or the acquisition of a replacement Accommodation if the applicable OA, if any, is not obligated to so reconstruct or acquire and whether or not the Trustee is responsible for such reconstruction or replacement, the Trustee shall assure that adequate arrangements are made for alternate accommodations during the time an Accommodation is being reconstructed or a replacement Accommodation is being sought. In the event a destroyed Accommodation is not reconstructed or replaced, the Trustee shall distribute any net proceeds from insurance it may receive to the appropriate Members whose Points were cancelled as a consequence thereof, as provided in Section 5.02(c) above.

(i) **OA Agreements.** The Trustee may enter into agreements with each OA to set forth the delegation of duties between the Trust and the OA. If an OA for a Vacation Plan is not a party to such an agreement or such Vacation Plan does not have an OA, then the Trustee, on behalf of the Trust as the holder of the Use Rights in Property Interests in such Vacation Plan, may take any action it deems necessary to enforce the rights of the Beneficiaries with respect to those Property Interests and the Accommodations available in respect thereof.

6.02 **Delegation of Duties.** The Trustee may delegate any or all of its duties under this Article VI or any other Article of this Trust Agreement to the Plan Manager. In performing all of the Trustee's duties delegated to it, the Plan Manager shall at all times insure that the total number of Points required to reserve all Accommodations available in respect of all of the Property Interests (or Use Rights therein) that have been subjected to this Trust Agreement during all use days shall always equal or exceed the total number of Points allocated to all of the Members.

6.03 **Plan Manager.** The initial Plan Manager shall be Wyndham, its successors or assigns. The Plan Manager shall operate the Plan pursuant to this Trust Agreement, the Management Agreement between Plan Manager and the Trustee and all other agreements entered into between either the Trustee or the Plan Manager and one or more Members or the developer or the OA for any Trust Property or Vacation Plan. The Management Agreement is incorporated herein by reference and made a part hereof as though set forth word for word. The Plan Manager may be removed only if those Members entitled to cast at least seventy-five percent (75%) of the then total votes of all of the Members vote, at an annual or special meeting of the Members of the Association held in accordance with the terms and provisions of the By-Laws of the Association, for the removal of the Plan Manager. In order to assure continuity, the Plan Manager shall be prohibited from resigning prior to the appointment of a successor Plan Manager.

6.04 **Expenses.** Trustee shall have no liability for any expenses attributable to the operation and administration of the Plan or the Trust or the operation, maintenance, repair or replacement of any of the Trust Properties, all such expenses to be paid out of, and to the extent of, the FairShare Plus Assessments collected from time to time.

ARTICLE VII

RIGHTS AND POWERS OF THE TRUSTEE

7.01 **Resignation of the Trustee.** The Trustee may resign upon not less than 90 days prior written notice of intent to resign delivered to Wyndham, the Plan Manager (if not then Wyndham) and the other Beneficiaries; provided, however, that the Trustee shall continue to perform pursuant to this Trust Agreement until a successor Trustee has been appointed. The successor Trustee must agree to perform the functions specified in this Trust Agreement. Wyndham and the Plan Manager (if not then Wyndham) shall agree on, or Wyndham (if it is then the Plan Manager) shall designate, a successor Trustee. In the event Wyndham and the Plan Manager (if not then Wyndham) fail to agree on, or Wyndham (if it is then the Plan Manager) shall fail to designate, a successor Trustee, then the Board of Directors may appoint a successor Trustee. In the event the Board of Directors fails to appoint a successor Trustee, any interested party may petition the applicable State Court for Pulaski County, Arkansas or the Federal District Court for the Eastern District of Arkansas, for the appointment of a successor Trustee. Upon appointment, a successor Trustee shall have all the powers and duties and shall perform the functions as described in this Trust Agreement. Nothing herein shall prohibit or preclude the appointment by the Trustee of a co-Trustee or a substitute Trustee under such circumstances as the Trustee shall deem necessary.

7.02 **Insurance by Trustee.** Trustee shall obtain and maintain errors and omissions insurance coverage in an amount not less than the amount required by Wyndham, or as may be required by law.

7.03 **Compensation and Reimbursement of Trustee.** For its services performed in connection with the Trust, the Trustee shall receive a reasonable fee as may be agreed upon by Wyndham and the Trustee. In addition, the Trustee shall be reimbursed for all costs and expenses which the Trustee incurs from time to time (a) in operating and administering the Trust and the Plan and operating, maintaining, repairing, and replacing the Trust Properties and (b) in connection with any escrow which may be established (including without limitation, the escrow for the OA Fees). It is expressly understood, however, that the Trustee is not required to take any action resulting in any expense of any kind unless there are funds on deposit in the Program Fund to pay such expense, or unless the Trustee receives a satisfactory written guarantee that such expenses will be promptly paid.

7.04 **General and Permissive Acts.**

(a) **Actions.** The Trustee may commence or defend any actions at law or in equity relating to the Trust, this Trust Agreement, the Plan or the Trust Properties. If a court action should be instituted in connection with the Trust, this Trust Agreement, the Plan and/or the Trust Properties or any part thereof, and the Trustee is named and served as a party, the Trustee shall be reimbursed out of the Program Fund for all fees, expenses, judgments and awards incurred in connection with such action. To the extent not prohibited by law, this Trust Agreement, the Association's Articles of Incorporation or the Association's By-Laws, the Trustee may also take any action deemed necessary by the Trustee to manage the Trust Properties, to carry out the purposes for which the Trust was established, to administer and/or operate the Plan (including the Trust and the Association), to implement any of the terms or provisions of this Trust Agreement, or to enhance the benefits of the Plan available to some or all of the Beneficiaries.

(b) **Employment of Others.** The Trustee may employ counsel, accountants and such other persons as in its judgment shall be necessary to perform, or to assist the Trustee in performing, any of its duties as Trustee. Trustee shall not be liable to any Beneficiary and shall be indemnified and held harmless by the Beneficiaries and the Trust (i) for the default, defalcation or wrongdoing of any such person so employed by the Trustee, if Trustee exercised due care in the selection of such person, or (ii) for any non-negligent action taken or suffered by Trustee in good faith in reliance upon the instructions or advice of any person so selected.

(c) **Compliance with Laws.** The Trustee may do any and all things as may be necessary to comply with all applicable laws, ordinances and regulations promulgated by any governmental authority concerning the Trust, this Trust Agreement, the Plan and the Trust Properties or any portion thereof, including, but not limited to, modifying, amending or restating this Trust Agreement to comply with such laws, ordinances and regulations.

(d) **Execution of Documents.** The Trustee may join with Wyndham or other necessary parties, upon request, in executing any necessary amendment or supplement to, or any restatement of, this Trust Agreement or any underlying Governing Instruments, documents, plats, or similar documents.

ARTICLE VII

TRUSTEE MAY NOT ENCUMBER PROPERTY

8.01 **Restrictions on Encumbrances.** Trustee, in its capacity as Trustee under this Trust Agreement, shall not encumber any of the Trust Properties or other assets of the Plan (including the escrowed OA Fees), except to the extent of the lien or security interest in favor of the Trustee for the payment of the Program Fees (as provided in Section 10.07 below); provided, however, the Trustee shall not be restricted from accepting on behalf of the Trust a conveyance of a Property Interest (or the Use Rights therein) which Property Interest has encumbrances or other interests which are or may be prior to those of any Beneficiary provided the provisions of ARTICLE VI, Section 6.01 (b) have been met.

ARTICLE IX

TRUSTEE LIABILITY

9.01 **Reliance on Opinion of Counsel.** The Trustee and the Board of Directors may, in the performance of any of its duties hereunder or in the taking of any action with respect to the Trust or this Trust Agreement, rely upon the advice of counsel selected and employed by the Trustee. The opinion of any such counsel with respect to the construction of this Trust Agreement or the rights, obligations and powers of any person affected hereby shall constitute full protection and be a justification to the Trustee and the Board of Directors for any action taken by the Trustee or the Board of Directors in good faith in reliance on such opinion.

9.02 **Protection of Trustee and the Board.** The Trustee and its Board of Directors are hereby relieved of any and all liability to any Beneficiary for any losses to his interest resulting from the Trustee or its Board of Directors acting in

accordance with the terms hereof. So long as the Trustee and its Board of Directors shall undertake to carry out their responsibilities under this Trust Agreement in good faith, neither the Trustee nor any of the Board of Directors shall be liable in damages or otherwise to the Beneficiaries or their representatives or to any third party who may rely on the terms of this Trust Agreement. Trustee and its Board of Directors shall not be required to verify the validity of any Purchase Agreement or Assignment Agreement which is valid on its face. Neither the Trustee nor its Board of Directors guarantees to any Member that said Member will be entitled to use or occupy any Accommodation available through his Property Interest or any other Accommodation for which the Trust holds Use Rights. If any dispute or difference arises between any of the Beneficiaries hereof and any third person or if any conflicting demands shall be made upon the Trustee or its Board of Directors, Trustee or the Board of Directors, as the case may be, shall not be required to determine the same or take any action; but Trustee or the Board of Directors, as the case may be, may await settlement of the controversy by final, appropriate legal proceedings or otherwise as it may require, or Trustee or the Board of Directors, as the case may be, may file suit in interpleader in the applicable State Court for Pulaski County, Arkansas or the Federal District Court for the Eastern District of Arkansas, for the purpose of having the respective rights of the parties adjudicated and may deposit with said court any and all Trust Properties held hereunder and any and all documents, contracts, accounts and/or rights of any form or character. Upon institution of any such interpleader suit and upon giving notice thereof to the parties thereto by personal service in accordance with the order of the court or in accordance with the requirements of the laws of Arkansas, Trustee and its Board of Directors shall be fully released and discharged from all further obligations hereunder with respect to the property and documents so deposited.

9.03 **Payment by Trustee.** Trustee may pay on demand, from the funds on deposit in the Program Fund, any and all costs, damages, judgments, attorney's fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with (a) the interpretation of this Trust Agreement or any amendments or supplements to, or restatements of, this Trust Agreement, (b) the taking of any action or acts taken pursuant to this Trust Agreement, as it may be amended and/or restated from time to time, in order to establish the validity of same, (c) the institution by the Trustee of any interpleader in accordance with the terms of this Trust Agreement or (d) any other proceeding to which the Trustee is made a party and which relates to the Trust, this Trust Agreement, the Plan or the Trust Properties.

ARTICLE X

FAIRSHARE PLUS ASSESSMENT; PROGRAM FUND

10.01 **FairShare Plus Assessment.** Each Member other than Wyndham is required to pay the FairShare Plus Assessment. The FairShare Plus Assessment consists of the sum of the Program Fee and the OA Fee, each of which will be determined on an annual basis prior to the beginning of each year. Upon receipt of the FairShare Plus Assessment, the OA Fee shall be deposited in the Escrow Account and the Program Fee shall be deposited in the Program Fund.

10.02 **Program Fee.**

(a) **Amount.** The amount of the Program Fee shall be determined by the Trustee as needed to cover the cost of the operation and administration of the Plan (including the operation and administration of the Trust and the Association and, to the extent that the Trust is responsible therefor, the operation, maintenance, repair and replacement of the Trust Properties). The Trustee may establish varying fees among Members provided there is a reasonable basis for such a fee structure. The Program Fee shall be determined prior to January 1 of each year in connection with the budget process for the Plan.

(b) **Use.** The Program Fee will be used by the Trustee to fund the operation and administration of the Plan (including, the operation and administration of the Trust and the Association and, to the extent that the Trust is responsible therefor, the operation, maintenance, repair and replacement of the Trust Properties).

10.03 **OA Fees.**

(a) **Amount.** Each Member's OA Fee shall be equal to the sum of all annual amounts, including without limitation recreation, maintenance and reserve fees and assessments and real estate taxes (to the extent payable through the OA), that each such Member agreed to pay the OA which governs the Property Interest which such Member used as the basis for his Membership. The amount of the OA Fee will be determined by each Member's respective OA and not by the Trustee. The amount of the OA Fee will vary from Member to Member as determined by the board of directors or other governing or managing authority of the OA which governs such Member's Property Interest.

(b) **Use.** The OA Fee will be collected by the Trustee in accordance with the terms of each Member's Purchase Agreement and/or Assignment Agreement and held in the Escrow Account for each such Member until the OA Fee is due to each such Member's respective OA. This fee will be paid by the Trustee to the applicable OA on or

before the date the fee is due, on behalf of each Member that has fully deposited his or her OA Fees in the Escrow Account. The OA Fee will be collected by the Trustee on behalf of the Member and neither the Trustee nor the Plan Manager shall have any discretionary power over the disposal or use of the OA Fee.

(c) **Escrow Account.** All OA Fees will remain in the Escrow Account until paid to the appropriate OA.

10.04 **Method of Payment.** FairShare Plus Assessments may be paid annually or in monthly installments. Members who elect to pay their FairShare Plus Assessments on an annual basis must pay for an entire twelve-month period in advance of the date that their OA Fee is due to their respective OAs.

10.05 **Escrow Account.** Funds on deposit in the Escrow Account may from time to time be invested in accordance with the Trust's investment policy. Investment income, if any, shall be used by the Trustee to offset the Program Fees for the year or years following the year in which the investment income is recorded.

10.06 **Special Assessments.**

(a) **Program Fees.** The determination of the amount of the Program Fee will be based upon the best available information at the time of the preparation of the budget for the Plan. Members will be required to pay or reimburse the Trustee in the event that for any year the total amount of Program Fees due from all Members is not sufficient to pay all expenses of administration and operation of the Plan (including administration and operation of the Trust and the Association and, to the extent that the Trust is responsible therefor, operation, maintenance, repair and replacement of the Trust Properties) for that year. Adjustments, if any, to cover such shortfalls will be allocated among Members in an equitable fashion as determined by the Board of Directors of the Trustee in its sole discretion.

(b) **OA Fees.** To the extent not then known, the OA Fees will be estimated at the beginning of each year based upon the best available information at the time of the determination of the FairShare Plus Assessment. The amounts due for the OA Fees will be adjusted at the end of each year upon receipt of the invoices for the actual amounts of the fees due the OAs and each Member will be billed for any increase in his OA Fees on or about January 31 of the following year. Any surplus resulting from a decrease in any Member's OA Fees will be held in the Escrow Account and used by the Trustee to offset the amount due from that Member for his OA Fees for the following year. Refunds may be requested by a Member if the amount of such Member's "excess" OA Fees held in the Escrow Account exceeds five percent (5%) of the anticipated OA Fee for the next year.

10.07 **Delinquent Payment of FairShare Plus Assessment.** A Member shall be deemed to be delinquent in the payment of his FairShare Plus Assessment or any installment thereof if such Member shall fail to pay the delinquent amount within thirty (30) days of the date that the Trustee (or the Plan Manager on behalf of the Trustee) sends written notice thereof. Once a Member is so delinquent, as provided in Section 11.07 below, such Member shall no longer be entitled to use his Points in the Plan unless and until such delinquency is cured. In addition, the Trustee shall have (and each Member, by acquiring a Property Interest subject to this Trust Agreement or by assigning to the Trust the Use Rights in his Property Interest, shall be deemed to have granted to the Trustee) a lien or security interest in such Member's Use Rights (or Property Interest) to the extent of the portion of the delinquency that constitutes Program Fees, which lien or security interest shall, in all respects, be subordinate to the lien or security of the underlying OA to the extent of the portion of the delinquency that constitutes OA fees and to the lien or security interest of any lender who has a previously recorded or perfected lien or security interest on such Member's Property Interest. Upon the occurrence of a delinquency, the Trustee is hereby authorized to take all steps necessary to perfect its lien or security interest and to enforce its lien or security interest in any manner permitted by applicable law, including, but not limited to, a suit at law or a power of sale or enforcement of its lien or security interest in the manner provided for under applicable law.

10.08 **Withdrawal from Trust.** In the event a Member withdraws his Property Interest (or the Use Rights therein) from the Trust for any reason, such Member shall be entitled to receive a refund of the prepaid OA Fee held in the Escrow Account on his behalf. The amount of the refund shall equal the balance of the withdrawing Member's prepaid OA Fees less any administrative fees charged by the Trustee and/or the Plan Manager in connection with such withdrawal. Program Fees are not refundable.

10.09 **Payment History.** Each Member may request a payment history report from the Trustee showing receipts and disbursements related to such Member's Membership; provided, however, no more than two such reports may be requested in any twelve (12) month period without an additional administrative charge.

10.10 **Member Directions Regarding OA Fees.** Each Member by acquiring a Property Interest previously subjected to this Trust Agreement or by assigning to the Trust the Use Rights in his Property Interest is deemed to have instructed

the Trustee to collect the OA Fees, deposit such amount in the Escrow Account and remit them when due to the appropriate OA which instruction shall be irrevocable unless and until such Member withdraws his Property Interest (or the Use Rights therein) from the Trust.

ARTICLE XI

TRUST PROPERTY RESERVATIONS

11.01 **Directory.** Set forth below in summary form are certain of the most important features of the Plan. The rules, regulations, guidelines, policies and procedures related to the allocation of Points to the Trust Properties and the use of Points by Members in connection with the Trust Properties and the Plan are fully described in the Directory. In the event of a conflict between the information described in this Article XI and the information set forth in the Directory, the information set forth in the Directory shall be controlling. Wyndham, in its sole discretion, reserves the right to amend the Directory and the provisions therein from time to time as may be necessary to implement the Plan.

11.02 **Use Year.** All Members shall be assigned a "Use Year" which determines the expiration date of such Member's Points for that particular year. Each Member shall have as the end date of his "Use Year" one of the following four quarterly dates: March 31, June 30, September 30 or December 31.

11.03 **Reservations.** The rules, regulations and guidelines concerning reservations and exchanges shall be set forth in the Directory. Reservations canceled thirty (30) days or more prior to the first day of intended use shall not result in a loss of Points. Reservations canceled less than thirty (30) days prior to the first day of intended use shall affect the use of the Member's Points in the manner described in the Directory (and may include the loss of the Points used by the Member for the reservation.)

11.04 **Wait List.** A "wait list" system has been established by the Trustee for those Members who desire reservation dates that are unavailable and who want to be on a list in the event there are cancellations. The Trustee may charge a fee for the maintenance of the "wait list", which fee may change, without any guarantee that the reservation date requested will become available. Use of the "wait list", however, does not prevent a Member from making other reservations during the time such Member might be on the "wait list".

11.05 **Rotating Priority List.** Holidays and other high demand vacation periods are a popular vacation time at many of the Accommodations. Accordingly, a Rotating Priority List may be established by the Trustee to provide all Members the opportunity to enjoy their choice of Accommodations during such time periods. The rules, regulations and guidelines for the Rotating Priority List are set forth in the Directory.

11.06 **The Points Credit Pool.** The Trustee has established a "Points Credit Pool" for the deposit of certain qualified Points that will not be used by a Member. The rules, regulations, guidelines and restrictions for the Points Credit Pool are set forth in the Directory.

11.07 **Delinquent Assessments.** The Trustee reserves the right to prohibit a Member from utilizing his Points to reserve or use Accommodations, in the event of a delinquency in the payment of any amounts due to Wyndham or any other seller, lender or lienholder related to such Member's Property Interest or Points, or in the event of a delinquency in the payment of the FairShare Plus Assessment to the Trustee or the payment of any amounts due from such Member to a OA.

11.08 **Wyndham Use.** In addition to the right of Wyndham, as a Member and owner of Points, to make reservations using those Points at any time, Wyndham, in its capacity as the developer of resort communities and Vacation Plans, may reserve available Accommodations up to 60 days in advance of the first day of anticipated occupancy, for its own purposes, including renting to the public, provided it pays or otherwise causes a third party to pay the occupancy related expenses of such Accommodations for each night to be used. All such occupancy related expenses shall be determined by the Trustee. As a result of Wyndham's use there will be less space available for Member use; however, Wyndham may not reserve the last 10% of available occupancy for a type of Accommodation until 30 days prior to the first day of intended use. In addition, to the extent more Points are available in the Plan than are allocated to Members other than Wyndham, Wyndham may sell or lease Points on such terms as Wyndham and the Trustee deem reasonable. The purchasers or lessees of such Points shall have such Membership rights as Wyndham and the Trustee deem appropriate.

11.09 **Presales.** In the event Wyndham presells Property Interests with proper regulatory approval and the purchaser of such Property Interest has subjected such Property Interest (or the Use Rights therein) to this Trust Agreement, such Purchaser shall be entitled to reserve Accommodations prior to the time the Accommodation(s) in the Vacation Plan in which such purchaser has purchased a Property Interest is/are available for occupancy, if the Trustee has determined that Accommodations available in the Plan are sufficient to accommodate such purchaser. Should the Trustee determine that there are insufficient Points available in the Plan to accommodate a purchaser who has purchased and subjected to this Trust

Agreement a Property Interest (or the Use Rights therein) in a Vacation Plan, the Accommodation(s) of which is/are not available for use, said purchaser shall not be entitled to reserve Accommodations until such time as said Accommodation(s) is/are available for occupancy.

11.10 Additional Exchange and Other Programs.

(a) **Internal.** Wyndham may develop an internal exchange program for Members by which the Members may reserve time in Vacation Plans outside of the Vacation Plans applicable to the Trust Properties. Wyndham may enter into agreements with one or more affiliated or unaffiliated resorts or resort developers at resorts whose Vacation Plan or Vacation Plans are not a part of the Vacation Plans applicable to the Trust Properties and/or one or more affiliated or unaffiliated owners/developers of hotel and non-timeshare resort properties which may provide additional Vacation Units that Members would be able to utilize. Finally, Wyndham may also enter into agreements with the developers of other types of programs or experiences (such as motor homes, houseboats, etc.,) which Members would be able to utilize. The number and location of available resorts and types of vacation and travel programs and experiences will change from time to time as set forth in the Directory and availability will be subject to the provisions of the Plan Manager's reservation system. Wyndham may charge a fee for each transaction it consummates on behalf of a Member, which fee will be subject to change. Wyndham's internal exchange system, called "FAX", may be made available to Members who wish to use their Points to reserve time in Vacation Units which are included in the "FAX" exchange network but are not available through the Plan. Wyndham may charge a fee, which will be subject to change, for each transaction which involves an exchange into the "FAX" exchange network. Persons who have acquired Property Interests in other Wyndham resorts and who are therefore entitled to the privileges of the "FAX" exchange network may also be entitled to exchange the Use Rights attributable to their Property Interests for use of Accommodations in the Plan, but such persons who are members of the "FAX" exchange network and who wish to exchange for Accommodations in the Plan may not submit reservations more than seven months in advance of their requested use period and they must have banked their Property Interest with FAX in advance of making such reservation request. All Points which Members use to avail themselves of any of the foregoing "internal" exchanges or programs shall be deemed to belong to Wyndham for the Use Year attributable to such Points and Wyndham shall be entitled to use such Points in the same fashion as any other Member, including, without limitation, making reservations for Accommodations and renting out those Accommodations to the public.

(b) **External.** An external exchange program may from time to time be available to qualified Members. Each Member, however, must determine whether he is eligible and desires to become a member of such external exchange program. Each participating Member will be required to pay any fees associated with membership in or the use of any such external exchange program. These external exchange programs are independent companies with no affiliation or relationship to Wyndham, other than RCI, LLC ("RCI"), which is a subsidiary of Wyndham Worldwide Corporation ("WWC"), WWC being the parent company of Wyndham. The guidelines for exchanging through an external exchange company are subject to change and, when available, will be set forth in the Directory.

(c) **Availability of Exchange.** Wyndham does not guarantee to the Members that any exchange as set forth in the exchange programs referenced above will be available to the Members.

11.11 **Priority Reservation Rights.** The Trustee may establish different rules and reservation rights for Members based upon (a) levels of Points owned, or (b) the location of the Accommodations available through the Property Interest purchased by a Member, or (c) the specific Use Rights assigned to the Trust, or (d) any other criteria determined by Trustee. Such rules and reservation rights, including priorities, fees, reservation periods, and other policies, guidelines and restrictions shall be set forth in the Directory.

ARTICLE XII

OTHER RIGHTS AND RESPONSIBILITIES OF MEMBERS

12.01 **Sale or Transfer.** A Member may sell or otherwise transfer his Property Interest and Points provided such Member gives notice to the Trustee at the address specified herein and provided further that the Points allocated to a Property Interest (or the Use Rights therein) may not be sold separate from such Property Interest. A Member may not transfer his Property Interest nor permit others to use the Points associated therewith unless such Member is current in the payment of his FairShare Plus Assessment. The transfer of a Property Interest and the Points associated therewith may not result in a Member owning less than the minimum number of Points needed to reserve one week in an Accommodation. A Member desiring to transfer his Property Interest must also obtain the written consent of Wyndham, which consent may be withheld if the Member is delinquent in the payment of any obligations then due Wyndham under his Purchase Agreement, or under a mortgage, deed of trust or other security instrument encumbering his Property Interest, or if the terms and conditions of the Member's Assignment Agreement prohibit the sale, conveyance or transfer of the Membership to persons other than Wyndham. Wyndham and/or the

Plan Manager has the right, in its discretion, to charge the purchaser a reasonable transfer fee for documenting the transfer of a Property Interest and the appurtenant Points.

12.02 **No Sale Assistance.** The Trustee and Wyndham have no obligation to repurchase or assist a Member with the sale of his Property Interest and the Points associated therewith.

ARTICLE XIII

MEMBERSHIP IN THE FAIRSHARE VACATION OWNERS ASSOCIATION AND OTHER OWNERS ASSOCIATIONS

13.01 **Fairshare Vacation Owners Association.** As noted above, all Members are also "Members" of the Association and are entitled to one vote at all Association meetings held in accordance with the Association's By-Laws without regard to the number of Points allocated to such Member. If there are multiple owners of a Membership, then the multiple owners shall designate one owner as the Voting Member and such Members shall be required to advise the Trustee of his selection. All Members are eligible to be members of the Board of Directors pursuant to the provisions set forth in the Articles of Incorporation and By-Laws of the Association. Any Member who is a member of the Board of Directors will pay his own expenses involved in traveling to and from the location of Board meetings. In addition, Wyndham shall be a Member of the Association.

13.02 **OA.** All Members shall remain or become members of the OA that governs their respective Property Interests, if applicable, and may also be members of the site or master association should one exist. Where allowed by law, each Member (with the exception, unless otherwise agreed between the Trustee and the respective OA, of those Members owning Property Interests in Vacation Plans which have not been developed by Wyndham, either as primary developer or as a co-developer with another entity), by executing an Assignment Agreement or a contract or accepting a deed for a Property Interest subject to this Trust Agreement, shall, if the Assignment Agreement or the contract or deed expressly so provides, delegate to the Voting Designee the authority to exercise any voting privileges such Member may have in the OA having jurisdiction over his Property Interest. Each Member who has so delegated his/her voting privileges also agrees to execute any additional documentation that may be requested from time to time by the Trustee to further evidence or continue the effectiveness of such delegation. In exercising the voting privilege of a Member, the Voting Designee agrees in its reasonable discretion to act at all times in the best interest of the Member. The Voting Designee agrees that it will notify the Member and vote as directed by the Member in writing on the following issues:

(a) **Waiver of Material Rights.** Waiver of any material rights of the OA or of the Members against the Plan Manager, Wyndham or a Third Party;

(b) **Fee Increases.** Any increase in the OA's annual maintenance fee or common expense in excess of 115% of the previous year's budget, excluding reserves; or

(c) **Termination.** Voluntary termination of the timeshare, condominium or townhouse regime or any proposal not to reconstruct any unit or common element after destruction or casualty.

The Voting Designee shall serve in such capacity until such time as the Property Interest or the Use Rights therein is/are no longer subject to the terms of this Trust Agreement. All OA Fees shall remain the personal obligation of Member, its heirs, successors or assigns; provided, however, it is agreed that all OA Fees shall be paid to the Trustee and held in the Escrow Account on behalf of the Member until such amount is due to the OA.

13.03 **Payment of Delinquent FairShare Plus Assessments.** Neither the Plan Manager, the Trustee, the Association nor Wyndham shall be responsible for paying any FairShare Plus Assessments or any delinquencies in any FairShare Plus Assessments.

ARTICLE XIV

MISCELLANEOUS

14.01 **Construction of Trust Agreement.** Nothing contained herein shall preclude the Trustee or any Beneficiary from the right to judicial construction of any of the terms to this Trust Agreement. This Trust Agreement shall be construed in accordance with the laws of the State of Arkansas. This Trust Agreement shall be interpreted liberally in favor of an interpretation which will give this Trust Agreement full force and effect. Any action brought to enforce the terms or interpret any provision of this Trust Agreement or any other action in any manner relating to the Trust, the Trustee, the Trust Properties or the

Plan shall be brought in the State Courts in Orange County, Florida or the Federal District Courts for the Middle District of Florida.

14.02 **Arbitration.** The Trustee may, upon request by all Members involved, arbitrate disputes arising between Members concerning the use and occupancy of Trust Properties and the interpretation of this Trust Agreement. The parties agree to abide by the findings of the Trustee.

14.03 **Severability.** In the event any one or more of the phrases, sentences, clauses or paragraphs contained herein should be invalid, this Trust Agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, and paragraph or paragraphs had not been inserted, and the remaining provisions will therefore be valid and fully enforceable in accordance with the terms thereof.

14.04 **Notice to the Parties.** Except for notices of Association meetings, any other notice to be given to a Beneficiary shall be given by certified mail, return receipt requested, addressed to the post office address last shown on the records of the Trustee or the Plan Manager. Every notice so given shall be effective from the date of the mailing of such notice and the date of the mailing of such notice shall be the date such notice is deemed given for all purposes. Notices of Association meetings shall be given in accordance with the requirements of the By-Laws.

Notice to be given to the Plan Manager or the Trustee shall be given by certified mail, return receipt requested to the following address:

Plan Manager FairShare Vacation Plan	Trustee
Wyndham Vacation Resorts, Inc.	Fairshare Vacation Owners Association
8427 SouthPark Circle	8427 SouthPark Circle
Orlando, Florida 32819	Orlando, Florida 32819
Attention: President	Attention: President

14.05 **Amendments.** The Trustee, with the consent of Wyndham, may amend this Trust Agreement in writing from time to time and shall have the right, but not the obligation, to cause any such amendment to be recorded in the Recording Offices of all counties in which Property Interests (or the Use Rights therein) subject to this Trust Agreement are located (as well as in or with all other Filing Offices). The Trustee, with the consent of Wyndham, may, from time-to-time, add a Third Party or additional Wyndham subsidiary as a party to this Trust Agreement on terms and conditions acceptable to the Trustee and Wyndham.

14.06 **Further Assurances.** Any party to this Trust Agreement or any Beneficiary will execute any additional document necessary or convenient to carry out the intent and purposes of the parties to this Trust Agreement.

14.07 **Acceptance and Ratification by Members.** All Members, by executing a Purchase Agreement or an Assignment Agreement or by accepting a deed to a Property Interest subjected to this Trust Agreement, shall be deemed to have accepted, and agreed to be bound by, the terms and provisions of this Trust Agreement and the Management Agreement executed in connection herewith and each Member, by making reservations through the Plan, paying his FairShare Plus Assessment and otherwise using the Plan from time to time, shall be deemed to have ratified and confirmed his prior acceptance of, and agreement to be bound by, this Trust Agreement and such Management Agreement.

14.08 **Exchange Programs.** The Trustee is authorized to enter into an agreement with exchange programs for the exchange of occupancy rights in the Trust Properties.

14.09 **Extensions.** This Trust Agreement shall be extended for successive ten (10) year periods unless and until those Members entitled to cast at least 50% of the then total votes of all Members vote, either at the annual meeting of the Association occurring during the last year of the then expiring term or at a special meeting of the Association, in either event, held in accordance with the terms of the By-Laws of the Association, to not extend the term of this Trust Agreement.

14.10 **Successors and Assigns.** This Trust Agreement shall be binding upon and shall inure to the benefit of the Beneficiaries (including the Members), their heirs, and permitted successors and assigns, as well as the parties hereto, their successors and assigns. This Trust Agreement may, as provided in Section 14.05 above, only be amended by the Trustee with the consent of Wyndham.

14.11 **Miscellaneous.** Unless the context of this Trust Agreement clearly requires otherwise, references to the plural shall be deemed to include the singular and vice versa and references to one gender shall be deemed to include all other

genders. In furtherance of the foregoing, any use of a masculine pronoun herein (such as "his") shall be deemed to include the feminine gender and the neuter (in the case of a corporation or other entity).

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Fairshare Vacation Plan Use Management Trust Agreement as of the 14th day of March, 2008.

WYNDHAM VACATION RESORTS, INC.,
a Delaware corporation
By:/S/Gary Byrd
Its: Executive Vice President

(SEAL)

FAIRFIELD MYRTLE BEACH, INC.,
a Delaware corporation
By:/S/George B. Hewes
Its: Senior Vice President

(SEAL)

FAIRSHARE VACATION OWNERS ASSOCIATION,
an Arkansas nonprofit corporation, in its capacity as TRUSTEE
By:/S/Brian D. Keller
Its: President

(SEAL)

WYNDHAM VACATION RESORTS, INC.,
a Delaware corporation, in its capacity as PLAN MANAGER
By:/S/Gary Byrd
Its: Executive Vice President

(SEAL)

FAIRSHARE VACATION OWNERS ASSOCIATION,
an Arkansas nonprofit corporation
By:/S/Brian D. Keller
Its: President

(SEAL)

FCI34-16-5-12

The following EXHIBIT A was attached to the Second Amended and Restated
FairShare Vacation Plan Use Management Trust Agreement

EXHIBIT A

Original "FairShare Vacation Plan Use Management Trust Agreement"

Recorded in the following counties:

SITE	STATE	COUNTY OFFICE	DATE	BOOK, PAGE ET SEQ.
Bay	AR	Cleburne Clerk of Court	07/09/91	Bk. Vol. 345, pp 675
	AR	Van Buren Clerk of Court	07/09/91	Doc. #91-3367
Branson	MO	Taney Recorder of Deeds	06/18/93	Bk. 320, pp 4761
Flagstaff	AZ	Coconino County Recorder	07/11/91	Doc. 1408, pp 544
Glade	TN	Cumberland Office of Register	07/09/91	Bk. 401, pp 648
Harbour	NC	Craven Register of Deeds	07/09/91	Bk. 1288, pp 534
Mountains	NC	Rutherford Register of Deeds	07/08/91	Bk. 579, pp 102
Myrtle Beach	SC	Horry RMC Office	07/10/91	Bk. 1480, pp 726
Nashville	TN	Davidson Office of Register	10/11/94	Bk. 9489, pp 981
Ocean Ridge	SC	Colleton RMC Office	07/12/91	Bk. 529, pp 135
Orlando	FL	Orange Comptroller	04/28/95	Bk. 4885, pp 2488
	FL	Osceola Clerk of Circuit Ct.	03/24/93	Bk. 1115, pp 2135
Pagosa	CO	Archuleta Office of Recorder	07/09/91	Receipt. 180408
Plantation	GA	Carroll Office of Clerk	07/17/91	D, Book 706, pp 312
Sapphire Valley	NC	Jackson Register of Deeds	07/10/91	Bk. 782, pp 15
	NC	Transylvania Register of Deeds	07/16/91	Bk. 341, pp 174
Ventura	CA	Ventura Office of Recorder	08/02/91	Doc. #91-111853
Williamsburg	VA	York Office of Clerk	07/12/91	Bk. 620, pp 260

**RECORDED INFORMATION FOR
AMENDED AND RESTATED FAIRSHARE VACATION PLAN USE MANAGEMENT TRUST AGREEMENT**

SITE	STATE	COUNTY	DATE	BOOK AND PAGE, ET SEQ.	OFFICE
Bay	Arkansas	Cleburne	06/17/98	Book 449, Page 451	Circuit Clerk
	Arkansas	Van Buren	06/05/98	Document #9802893	Circuit Clerk
Branson	Missouri	Taney	06/18/98	Book 352, Page 3589	Recorder
Daytona	Florida	Volusia	06/22/99	Book 4448, Page 1125	Clerk of the Court
Destin	Florida	Okaloosa	06/22/99	Book 2213, Page 4999	Clerk of Court
	Florida	Walton	06/23/99	Book 2034, Page 214	Clerk of Court
Durango	Colorado	La Plata	05/31/02	Reception #831285	Clerk of Circuit Court
Flagstaff	Arizona	Coconino	07/06/98	Docket 2122, Page 214	County Recorder
Ft. Lauderdale	Florida	Broward	03/12/98	Book 27856, Page 727	Recorder
Glade	Tennessee	Cumberland	05/11/98	Book 1015, Page 2261	Register of Deeds
Harbour	North Carolina	Craven	06/19/98	Book 1635, Page 234	Register of Deeds
Las Vegas	Nevada	Clark	05/13/98	Book 970513, Instrument 1787	County Recorder
Mountains	North Carolina	Rutherford	06/08/98	Book 712, Page 822	Register of Deeds
Myrtle Beach	South Carolina	Horry	05/18/98	Book 2037, Page 1219	Register of Deeds
Nashville	Tennessee	Davidson	05/12/98	Book 10928, Page 959	Register of Deeds
Ocean Ridge	South Carolina	Colleton	06/12/98	Book 818, Page 01	Clerk of Court
Orlando	Florida	Orange	05/01/98	Book 5472, Page 2613	Recorder
	Florida	Osceola	04/30/98	Book 1493, Page 738	Clerk of Court
Pagosa	Colorado	Archuleta	04/28/98	Reception #98003095	Clerk of Circuit Court
Plantation	Georgia	Carroll	05/08/98	Book 1044, Page 165	Clerk of Court
Sapphire Valley	North Carolina	Jackson	04/27/98	Book 993, Page 322	Register of Deeds
	North Carolina	Transylvania	05/15/98	Book 431, Page 782	Register of Deeds
Sedona	Arizona	Yavapai	12/15/99	Book 3717, Page 571	Recorder
Smoky Mountains	Tennessee	Sevier	07/01/99	Book M359, Page 64	Register of Deeds
Ventura	California	Ventura	05/06/98	Reception #98-070333	County Recorder
Washington DC	Virginia	City/Alexandria	03/23/98	Book 1634, Page 1995	Clerk of Circuit Court
Williamsburg	Virginia	York	04/28/98	Book 1009, Page 209	Office of Clerk

EXHIBIT B

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is dated as of January 1, 1996, by and between FAIRSHARE VACATION OWNERS ASSOCIATION, an Arkansas nonprofit corporation ("Owners Association"), as Trustee under that certain Amended and Restated FairShare Vacation Plan Use Management Trust Agreement dated as of January 1, 1996, as may be amended from time to time (in such capacity, the "Trustee"), and FAIRFIELD COMMUNITIES, INC., a Delaware corporation ("Manager").

SECTION 1

DEFINITIONS

Unless the context otherwise requires, the Definitions set forth in the AMENDED AND RESTATED FAIRSHARE VACATION PLAN USE MANAGEMENT TRUST AGREEMENT dated as of January 1, 1996, as may be amended from time to time ("Trust Agreement"), are hereby adopted as the definitions herein.

SECTION 2

RECITALS

2.1. Vacation Plan. The FairShare Vacation Plan has been established by Fairfield Communities, Inc. to acquire, own, lease, care for, maintain, operate and manage vacation accommodations for the benefit of the Members. The vacation accommodations and such other real and personal property as may be subjected from time to time to the Trust Agreement (collectively, the "Trust Property") will be available for use by the Members through the reservation system established by the rules and regulations ("Rules") set forth in the Directory.

2.2. Management. The Trustee is responsible for the maintenance, operation, management, and general care of the Trust Property, the collection of the FairShare Plus Assessments, and the implementation of a Reservation System for the Trust Property.

2.3. Manager. The Trustee is authorized to retain a professional manager and to delegate to such manager certain of the Trust's powers and responsibilities. The Trustee desires to engage Manager to manage and operate the Trust and the Trust Properties and provide access to the Manager's Reservation System to the Members, and Manager desires to accept such engagement, all on the terms and conditions set forth below.

SECTION 3

ENGAGEMENT OF MANAGER

The Trustee hereby engages Manager as the exclusive Plan Manager for the Plan and the Trust Property, and Manager hereby accepts said appointment and undertakes to perform all of the services and responsibilities set forth herein in such capacity, and to implement and to comply with all the provisions of this Agreement and the Trust Agreement.

SECTION 4

TERM

4.1. Initial Term. Unless terminated earlier pursuant to Paragraph 4.4 below, the initial term of this Agreement shall be for a period of five (5) years commencing on the date first written above ("Effective Date").

4.2. Automatic Renewal. The term of this Agreement shall be automatically renewed for successive terms of five (5) years each at the end of each calendar year unless the Trustee shall have delivered written notice of termination to Manager on or before six (6) months prior to the end of a calendar year. In the event written notice of termination is given by the Trustee to Manager hereunder, this Agreement shall thereafter terminate at the end of the five (5) year term then in effect. Any renewal under this section need not be evidenced in writing.

4.3. Notice of Nonrenewal. The Members of the Owners Association may elect to terminate this Agreement pursuant to Paragraph 4.2 above on the vote or written consent of seventy five percent (75%) of the Members entitled to vote.

4.4. Termination. This Agreement may be terminated for cause by the Trustee at any time prior to expiration, provided that, if the cause constitutes a breach or default of this Agreement which is capable of being cured, such breach or default shall not

have been cured within ninety (90) days following receipt by Manager of written notice of such breach or default. If Manager shall dispute a termination by the Trustee pursuant to this paragraph, the dispute may, at Manager's option, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

4.5. Resignation.

(a) Notice. Manager may resign by delivering to the Trustee written notice of its resignation at least nine (9) months in advance of the date the resignation shall be effective (the "Termination Date"); and

(b) New Agreement. On or before the Termination Date, the Trustee shall have entered into a management agreement with another management firm in accordance with applicable provisions of the Trust Agreement, or shall discharge the duties delegated to Manager hereunder with its own personnel, or otherwise.

4.6. Duties Following Termination. Following a termination of the Management Agreement by either party, Manager will, in Manager's sole discretion, either:

(a) Permit the Trust to utilize Manager's reservation system for a transition period of up to nine (9) months from the Termination Date in the same manner and at the same cost as the Trust utilized the reservation system prior to the Termination Date in order to afford the Trust a reasonable opportunity to obtain a new reservation system and arrange for the transfer of all relevant data from the Reservation System to the new reservation system as described in subsection (b) below; or

(b) Promptly transfer to the Trust all relevant data contained in the Reservation System, including but not limited to the names, addresses, and reservation status of Accommodations, the names and addresses of all Members, all outstanding confirmed reservations and reservation requests, and such other Member and Trust Property records and information as is sufficient, in the reasonable discretion of the Trustee, to permit the uninterrupted operation and administration of the Trust for the collective benefit of the Members. All reasonable costs incurred by the Manager in effecting such transfer shall be reimbursed thereto and shall constitute common expenses of the Trust.

SECTION 5

DUTIES AND OBLIGATIONS OF MANAGER

5.1. Generally. Manager shall provide or cause to be provided all services and personnel required to administer the affairs of the Trust and to manage and operate the Trust Property as contemplated by the Trust Agreement, at all times not inconsistent with the Trust Agreement, resolutions of the Board and the Members, this Agreement and any applicable state or federal statute, rule or regulation. Any persons actually hired by Manager shall be the employees of Manager rather than the Trust. Manager, in its absolute discretion, may cause to be discharged any employee or subcontractor so hired.

(a) Powers. Manager shall have all the powers and authority, and limitations thereon, which the Trustee has, pursuant to the Trust Agreement, to the extent necessary to perform its duties and obligations hereunder.

(b) Delegation. Subject to Paragraph 5.6 below, Manager may delegate its authority and responsibilities to one or more subagents or subcontractors, whether or not affiliated with Manager, for such periods and upon such terms as Manager deems proper, but shall remain ultimately responsible for the performance of any such delegated duties and obligations.

(c) Efficiency. Manager will furnish its services and use its best efforts to provide the Trust with economic efficiency consistent with safe and proper management and enjoyment of the Trust Property by the Members and their guests. Manager will use its reasonable best efforts to keep total operating costs within the Budget.

5.2. Administrative Services. Without limiting the generality of the foregoing, Manager shall provide the following administrative services:

(a) Meetings. Manager shall organize and have the right to attend all meetings of the Board and of the Members. Manager shall prepare and deliver notices of meetings in accordance with the Bylaws, prepare the agenda for all meetings, assist in the conduct of the meetings, and oversee the election of directors and other business.

(b) Trust Records. Manager shall maintain all records of the affairs of the Trust, including, but not limited to, minutes of meetings, correspondence, financial records and modifications of the Bylaws and the Rules.

(c) Rules. Manager shall have the authority to promulgate, adopt and amend the Rules of the Trust as it deems advisable, in its sole discretion, for the use and occupancy of the Property, subject to the approval of the Trustee.

(d) Insurance. Manager shall provide through the Budget, either directly or through the appropriate entity designated in the applicable Resort Declaration, fire and casualty insurance coverage of the Accommodations owned by Trust, unless such insurance is paid through the applicable POA. Manager shall deliver to the Trust any insurance proceeds it may receive, to be held pending the reconstruction of an Accommodation or the acquisition of a replacement Accommodation. Where not provided by the POA, Manager, subject to prior approval of the Trustee and availability of funds from insurance proceeds or other funds of the Trust, shall be responsible for reconstruction of said Accommodation or the acquisition of a replacement Accommodation and shall assure that adequate arrangements for alternate lodging during the time an Accommodation is being reconstructed are made, all at the expense of the Trust.

(e) Reservations. Manager shall establish and operate the Reservation System implementing the reservation procedure set forth in the Trust Agreement and the Rules. The Reservation System shall reflect reservations made, use of Vacation Points, and such other information as shall be necessary to operate the Trust. The Trustee agrees and acknowledges that the Reservation System is and will remain the sole property of Manager.

(f) Exchange Program. Manager shall administer any External Exchange Program with which the Trust may become affiliated from time to time.

(g) Additions or Withdrawals. Manager, with the consent of the Trustee, may from time to time add or withdraw Accommodations from the Trust Property pursuant to the provisions of the Trust Agreement.

(h) Vote. Manager shall represent and act and vote for the Trust in all POAs at Resort Developments where the Trust Property is located. Manager shall exercise such vote and representation in the best interest of the Trust, in Manager's discretion, unless specifically directed by the Trustee. The Trustee agrees to execute any written proxy or proxies that may be requested by any POA or Manager.

(i) Professionals. Manager may hire or retain on behalf of the Trust, professionals such as attorneys, accountants and engineers, whose services may be reasonably required to perform the duties and powers set forth herein on any basis it deems appropriate.

(j) Resort Associations. Manager may enter into an agreement with each POA which shall set forth the delegation of duties between the Manager and the POA.

(k) Plan Manager. Manager shall perform all duties to be performed by the Plan Manager or delegated to the Plan Manager in accordance with the Trust Agreement.

5.3. Financial Services. Without limiting the generality of section 5.1 above, Manager shall, subject to the supervision of the Trustee, provide the following financial services:

(a) Budget. Manager shall prepare and submit to the Trustee for approval, not less than forty-five (45) days prior to the end of each succeeding Fiscal Year, a budget of the anticipated income, expenses and reserves for the next calendar year, in accordance with the Trust Agreement; provided, however, if Manager has not received all POA budgets and other necessary financial information from the POAs required to prepare the budget, then the date the budget must be submitted to the Trustee shall be extended to the earlier of ten (10) days after receipt of all such POA budgets and information and the last day of the current Fiscal Year. If the budget is submitted on the last day of the Fiscal Year prior to receipt of all required POA budgets and financial information then Manager shall estimate such amounts based on the prior year's budget. Each budget approved by the Trustee is hereinafter called the "Budget".

(b) Program Fees. During December of each year, Manager shall determine each Member's Program Fee based upon the Budget and the number of Vacation Points owned by such Member.

(c) Special Assessments. Manager shall determine whether a Special Assessment may be required, from time to time, and, promptly upon making a determination that a Special Assessment is required, shall submit a recommendation to the Trustee that a Special Assessment be levied.

(d) Collections. Manager shall cause the Assessments to be collected and enforce payment of FairShare Plus Assessments as follows:

(i) Manager shall cause to be prepared and mailed to all Members periodic statements setting forth the amount of all FairShare Plus Assessments then due from each Member, pursuant to the Trust Agreement;

(ii) Manager shall cause to be prepared and mailed to any delinquent Members a notice of delinquency and shall use its reasonable best efforts to collect delinquent Assessments as provided in the Trust Agreement; and

(iii) Manager shall have the right to enforce any lien for unpaid Assessments and all other sums due from a Member to the same extent as the Trust has such right pursuant to the Trust Agreement. Manager may assign the right to enforce any such lien to any party to which Manager has delegated any collection duties pursuant to this Section 5. Manager may compromise liens for Assessments, interest, late charges, or any fines imposed in such amounts as it deems advisable, in its sole discretion, and may satisfy liens of record.

(e) Bank Accounts. Manager shall establish the deposit accounts provided for in the Trust Agreement or designated by the Trustee or required by applicable state or federal statute, rule or regulation, and shall promptly deposit funds collected from Members and all other amounts collected by Manager in connection with the performance of its duties hereunder, in the accounts designated for such purposes. Manager shall keep accurate books and records reflecting the amount of such accounts attributable to each Member.

(f) POA Fees. Manager shall collect and deposit each Member's POA Fee in the Escrow Account in accordance with the terms of the Trust Agreement. Manager shall pay the POA Fee on behalf of each Member that has fully deposited his or her POA Fee in the Escrow Account on or before the date the POA Fee is due to such Member's POA.

(g) Disbursements. Manager shall pay, with Trust funds, all expenses adequately substantiated in writing that are consistent with the applicable Budget, are otherwise approved by the Board or are permitted by the Trust Agreement.

(h) Financial Statements and Tax Returns. Manager shall annually provide a full and complete accounting of the past fiscal year's expenditures to each Member. Upon the request of the Trustee, Manager shall employ, at the expense of the Trust, an independent auditor to annually audit the accounts of the Trust. A copy of any such annual audit shall be delivered by the independent auditor to Manager, the Trustee and to any Member that requests a copy. Manager shall also cause to be prepared and filed on behalf of the Trust all state and federal income tax returns.

(i) Books and Records. Manager shall keep and maintain or cause to be kept and maintained full and adequate books and records reflecting the results of operation of the Trust in accordance with generally accepted accounting principles. The books of account and other records relating to the operation of the Trust shall be available to the Trust and its representatives at all reasonable times for examination, inspection and transcription.

(j) Reports. Manager shall prepare or cause to be prepared the reports and statements required to be prepared by the Trust Agreement and such additional membership communications and reports as to subjects and frequency as the Trustee reasonably requests.

(k) Inventory. Manager shall maintain an accurate inventory of all furniture, fixtures and equipment, purchased for or owned or leased by the Trust.

(l) Membership Roster. Manager shall maintain a record of the names of all Members and the cumulative number of Points allocated to the Trust Property.

5.4. Physical Services. Without limiting the generality of Section 5.1 above, Manager shall provide the following physical services where such services are not provided by the applicable POA.

(a) Inspections. Manager shall make inspections of the Accommodations and render reports and make recommendations concerning the Trust Property to the Trustee.

(b) Repair and Maintenance. Manager shall cause the Trust Property and the Accommodations to be repaired, maintained, repainted, furnished and refurnished in a manner consistent with the reserves established for such purposes and as required to maintain the quality standards of the Trust.

(c) Check-In and Check-Out. Manager shall cause on-site personnel to be available at all required times in order to check-in and check-out Members and/or their guests.

(d) Maid Service. Manager shall cause maid, cleaning and linen service to be provided for the Accommodations.

(e) Right of Entry. Manager, or its duly authorized agents or employees, shall have the right, at reasonable times and upon reasonable notice, without liability to the Trust or any Member, to enter into any Accommodation for the purposes of carrying out the above described duties and responsibilities, if necessary.

5.5. Manager Insurance. Manager shall, at its sole cost and expense, furnish to the Trustee, on the effective date, satisfactory evidence of the insurance coverage set forth below showing Manager as the named insured, naming the Trust as an additional insured and/or providing for waiver of subrogation as to the Trust, and providing that such coverages are cancelable only upon 30 days prior written notice to the secretary of the Trustee:

(a) Worker's Compensation. Insurance required by the Worker's Compensation Laws of the respective states in which Manager has employees managing the Trust Property;

(b) Liability. Insurance against loss or damage resulting from damage to property in the amount of at least \$100,000 and injury or death to any person or persons in the aggregate sum of at least \$1,000,000 per occurrence;

(c) Fidelity. A bond or insurance in favor of the Trust, against loss from monies, securities or other properties being stolen, converted or misappropriated by Manager or any of its directors, officers or employees, in an amount reasonably satisfactory to the regulatory authorities in states where Memberships are marketed; and

(d) Errors and Omissions. Errors and omissions insurance if available at reasonable and competitive rates.

5.6. Limited Liability. Manager shall not be responsible for the acts, omissions to act or conduct of any of the Members or for the breach of any of the obligations of any of the Members.

SECTION 6

COMPENSATION

6.1. Fee. Manager shall receive a monthly compensation equal to one-twelfth (1/12th) of five percent (5%) of the Program Fees, special and other assessments (other than the POA Fees) collected from Members in connection with the operation of the Trust.

6.2. Expenses.

(a) Trust. The Trust shall be responsible for and pay or reimburse Manager for all costs and expenses (including without limitation, a reasonable profit at the prevailing market rate) arising from:

(i) the operation and maintenance of Manager's reservation system as used by Members in excess of amounts received by Manager through fees charged for use of the reservation system;

(ii) ownership and management of the Trust Property, including without limitation, expenses for the refurbishment of all interiors and furnishings of the Trust Property where not provided by the POA; provided, however, no major refurbishment of any interiors shall be performed during the last four years the particular Accommodation is in the Plan without the approval of the Trustee.

(iii) services applied directly to Trust purposes, and solely for the benefit of the Trust, such as maid and cleaning, telephone, postage, messenger and delivery, photocopying, and printing;

(iv) rent and utilities for offices used solely for Trust business;

(v) supplies and equipment used solely for Trust business, including lease or rent payments therefor;

(vi) Trust employees or independent contractors for services rendered exclusively to the Trust;

(vii) insurance for the Trust and Trust employees as required by the Trust Agreements;

(viii) such other services as Manager may from time to time render;

- (ix) salaries, bonuses and benefits of employees of Manager that perform services for the Trust;
- (x) Manager's participation, on the Trust's behalf, in the affairs of any POA;
- (xi) the operation and management of the Trust, including, but not limited to, the Trustee's fees and expenses described in the Trust Agreement; and
- (xii) such other goods or services related to the Trust as may be necessary and reasonable in the opinion of Manager.

(b) Manager. Manager shall be responsible for and pay from Manager's own funds all costs and expenses arising from:

- (i) services which are not applied to Manager's duties hereunder and are not for the benefit of the Trust;
- (ii) supplies, equipment and offices not used for the benefit of the Trust;
- (iii) advertising, commissions and other marketing costs regarding sales of Memberships;
- (iv) insurance or bonding required of Manager by this Agreement; and
- (v) employees of Manager who do not perform services for the Trust.

6.3. Advances and Reimbursements. Manager shall not be required to perform any act or duty hereunder involving an expenditure of money unless there shall be sufficient funds for such expenditure in the deposit accounts of the Trust. If at any time the funds in the bank accounts of the Trust are not sufficient to pay the Trust obligations in a timely manner, Manager, although not obligated to do so, may advance such sums as it deems necessary, and Manager shall thereupon be entitled to reimburse itself from Trust funds for the amount of such advances, together with interest at the rate of 10.00% per year beginning from and after 20 days from the date of the advance by Manager.

6.4. Payment. Manager is hereby authorized to pay itself the Management Fee, reimbursements, and authorized expenses, out of the deposit accounts of the Trust.

SECTION 7

GENERAL PROVISIONS

7.1. Agency. Nothing in this Agreement shall constitute a partnership between, or joint venture by, the parties hereto, or constitute Manager an employee of the Trust or the Trustee. Manager is an independent contractor.

7.2. Amendment. No supplement, modification or amendment of this Agreement shall be established except in a writing executed by each of the parties.

7.3. Assignment. Manager may assign this Agreement at any time without the consent of the Trustee, so long as the assignee agrees in writing to assume and perform the terms and covenants of this Agreement. Upon such assignment and assumption, Manager shall be released from any and all obligations hereunder.

7.4. Attorneys' Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement or their rights and duties hereunder, the party prevailing in such action or proceeding shall be entitled to reasonable attorneys' fees and costs in such action or proceeding, which shall be determined by the court or arbitrator. Each party shall bear its own costs, expenses, and attorney fees incurred in negotiating, preparing, and signing this Agreement.

7.5. Captions. The subject headings or captions in this Agreement are for convenience and reference only and do not in any way modify, interpret, or construe the intent of the parties or affect any of the provisions of this Agreement.

7.6. Competition. The Trustee agrees that it will not, on its own behalf or on behalf of the Trust, solicit, hire, employ, or in any way obtain or retain the services of any employee of Manager, whether or not for compensation, during the Term of this Agreement and for a period of twelve (12) months following the date of termination or expiration of this Agreement.

7.7. Entire Agreement. This Agreement and all documents executed contemporaneously herewith and/or specifically referred to herein, including without limitation the Trust Agreement, constitute the complete, exclusive and final expression of the agreements between the parties pertaining to the subject matter contained herein and therein, supersedes all prior and contemporaneous agreements, representations, and understandings of the parties, and may not be contradicted by evidence of any prior or contemporaneous agreement.

7.8. Further Assurances. The parties hereto agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes of this Agreement.

7.9. Hold Harmless and Indemnity. Each of the parties agrees to hold the other party harmless and indemnify the other party from and against any and all loss, cost, damage or liability which the other party may incur or sustain as a result of any action by such party or any breach by such party of any warranty or representation contained in this Agreement, or for any misrepresentation or material omission in the representations herein, or for any violation of any applicable law, ordinance or regulation, whether by neglect or willful act and whether by a party or its agents, contractors, or employees. The Trustee agrees to hold harmless and indemnify Manager from and against any and all loss, cost, damage or liability to which Manager may be subjected by reasonable, good faith performance of its duties hereunder. Such indemnification shall include, among other costs, attorneys' fees and costs of appeal, settlement or defense, and the obligation to undertake or assume the defense of any claim.

7.10. Law Applicable. This Agreement and its interpretation, construction, and enforcement, shall be governed by the laws of the State of Arkansas.

7.11. Legal Effects. No representation, warranty or recommendation is made by any party or his respective agent or attorney regarding the legal sufficiency or effect or tax consequences of any transaction contemplated under this Agreement to any individual or specific entity, and each party acknowledges it has been advised to submit this Agreement to independent legal counsel before signing it. There shall be no presumption in favor of or against any party with regard to which party arranged for initial drafting of this Agreement.

7.12. Notices. Any notice required or desired to be given hereunder shall be deemed given if personally delivered, or ninety-six (96) hours after mailing (first class postage prepaid, return receipt requested), to the parties at the following addresses, or at such other addresses as may be given by proper notice:

(a) Manager: Fairfield Communities, Inc.
 11001 Executive Center Drive
 Little Rock, Arkansas 72211
 Attention: General Counsel

(b) Trust: Fairshare Vacation Owners Association
 11001 Executive Center Drive
 Little Rock, Arkansas 72211
 Attention: President

7.13. Parties In Interest. Unless specifically otherwise provided herein, (a) nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto; (b) nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement; and (c) nothing herein shall give any third person any right of subrogation or action over or against any party to this Agreement.

7.14. Records. Each party shall maintain books and records containing all transactions in furtherance of this such books and records shall be maintained in accordance with usual accounting methods.

7.15. Remedies. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy given hereunder or now or hereafter listing at law or in equity. The election of any one or more remedies by any party shall not constitute a waiver of the right to pursue other available remedies.

7.16. Severability. If any provision of this agreement is held to be unenforceable invalid or illegal by any court of competent jurisdiction such shall not affect the remainder of this Agreement.

7.17. Successors. Subject to the paragraph regarding Assignment, this Agreement shall be binding upon and benefit the heirs, legal representatives, successors, and assigns of the parties.

7.18. Survival. All covenants and warranties hereunder shall survive the recording of any document, and some provisions shall survive termination or expiration of this Agreement for a reasonable time or for the specified time if necessary to carry out their reasonably intended effect.

7.19. Time. Time is of the essence of this Agreement. If any date or time referred to herein shall fall on Saturday, Sunday, or a legal holiday, the date or time shall be extended to the next regular business day.

7.20. Waiver. No waiver of enforcement or breach of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions whether or not similar nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the person making the waiver.

7.21. Word Usage. unless the context clearly otherwise requires (a) the plural and singular or the masculine, feminine and neuter genders shall each be deemed to include the others; (b) "shall", "will", or "agrees" are mandatory, and "may" is permissive; (c) "or" is not exclusive; and (d) "including" or "such as" is not limiting.

TRUSTEE:

MANAGER:

FAIRSHARE VACATION OWNERS ASSOCIATION,
an Arkansas non-profit corporation, as
Trustee of the FairShare Vacation Plan
Use Management Trust

FAIRFIELD COMMUNITIES, INC.
a Delaware corporation

By: /S/Clayton G. Gring, Sr.
President

By: /S/Mark Nuzzo
Vice President

FCI34-16-4-25

EXHIBIT C

BIENNIAL

PURCHASE AND SALE AGREEMENT00126-1518153
CONTRACT NUMBER

THIS PURCHASE AND SALE AGREEMENT ("*Agreement*") is executed this 31st day of July, 2015, between WYNDHAM VACATION RESORTS, INC., a Delaware corporation, whose address is 6277 Sea Harbor Dr., Orlando, FL 32821 ("*We*" or "*Us*", with the possessive "*Our*"), and JUSTIN NOLEN and CAROLYN NOLEN TENANTS IN COMMON Member Number: [REDACTED] Telephone Number: [REDACTED] of [REDACTED] ("*You*" or "*Yours*").

1. AGREEMENT TO BUY AND SELL

We agree to sell and you agree to buy for the price of \$20,900.00, together with interest and closing costs as provided in this Agreement, a 119,000/441,210,000 undivided tenant-in-common interest in Units 131-144, 146, 231-246, 331-346 in Building 2, Phase II having a Floating Use Right ("*Property*") of FAIRFIELD ORLANDO AT BONNET CREEK RESORT, A CONDOMINIUM ("*Condominium*"), together with all appurtenances thereto, located at 9560 Via Encinas, Lake Buena Vista, Florida 32830. The Property and Condominium are both subject to the Declaration of Condominium for Fairfield Orlando at Bonnet Creek Resort, A Condominium ("*Declaration*"), which has been recorded in Official Records Book 7475, Page 381 in the Public Records of Orange County, Florida, including all amendments and supplements, if any.

You have delivered to Us this date the sum of \$21,249.00, which includes \$349.00 of a processing fee of \$349.00, as a good faith deposit (the "*Deposit*") toward the purchase price of the Property. You agree to pay the remaining balance of the purchase price either by payment in full of the remaining balance of the purchase price in cash or by certified check or by executing a promissory note (the "*Note*") on a form supplied by Us and on terms as described in the certain Truth-in-Lending Disclosure Statement (the "*Disclosure Statement*") delivered to You with this Agreement. The Note shall be secured by a mortgage entitled Mortgage Deed (the "*Mortgage*") encumbering the Property on a form supplied by Us and according to the terms described in the Disclosure Statement.

You acknowledge and agree to pay Us a processing fee of \$349.00, which is charged to all buyers, whether paying in cash or buying on credit. You pay this fee to Us, who as processor, performs various processing services related to the sale, including administration and preparation of various documents related to the sale. These services are separate and distinct from the services that We perform as settlement agent. See Your Disclosure Statement.

2. CONVEYANCE OF TITLE

We will give You, within 180 days after closing, a Special Warranty Deed ("*Deed*") conveying title free and clear of all encumbrances, subject to mineral reservations, covenants, restrictions, easements and other matters of record at the time of closing (including the matters as set forth in the condominium drawings ("*Condominium Drawings*") and the Declaration. At closing, We will convey title to an ownership interest in the Property with occupancy rights in every other resort year ("*VOI*").

TITLE TO BE TAKEN: Tenants In Common

WE ACKNOWLEDGE RECEIPT OF YOUR DEPOSIT IN THE AMOUNT OF \$21,249.00 (WHICH INCLUDES \$349.00 OF THE PROCESSING FEE) AND ALSO FILING FEES TO BE PAID BY YOU IN THE AMOUNT OF \$164.80. You may obtain title insurance coverage on your VOI, but you are not obligated to do so.

You hereby elect do not elect to purchase title insurance coverage. If You want title insurance, THE AMOUNT OF \$0.00 MUST BE PAID BY YOU FOR THE TITLE INSURANCE PREMIUM AND ASSOCIATED COSTS EITHER UPON THE SIGNING OF THIS AGREEMENT OR PRIOR TO DELIVERY OF THE TITLE POLICY. No title insurance commitment will be issued. Title Insurance coverage will be underwritten by a title insurance company through which We have negotiated a competitive rate. If You paid for title insurance, We will send you the policy within 180 days following recordation of the Deed. The Deed will not be held in escrow prior to issuance of the title policy. You can obtain a title insurance policy from any other title insurance provider You choose; however, You will have to arrange for it and pay its costs.

The estimated date of closing is WITHIN 6 MONTHS FROM THE DATE OF THIS CONTRACT

3. VACATION OWNERSHIP INTERESTS

The VOI is a fee simple real property undivided interest as a tenant-in-common with other Owners in the Property. The VOI is expressed as a fraction in which the numerator relates to the number of Points allocated to You pursuant to the provisions of the Declaration creating the Vacation Ownership Plan. The Vacation Ownership Plan is perpetual unless terminated as provided in the Declaration.

4. USE AND OCCUPANCY

The use, occupancy and possessory rights of your VOI are subject to and are governed by the Declaration. You are assigned 238,000 Points. Points are symbolic and are to be used by You in reserving occupancy in your Floating Use Right as designated in the Declaration. A reservation for occupancy of a timeshare Unit shall be confirmed by following the Reservation System Rules and Regulations for the Plan of Bonnet Creek Resort Vacation Condominium Association, Inc. ("*Association*").

Your Deed shall indicate by the use of the word "*EVEN*" or the word "*ODD*" the VOI being conveyed. The word EVEN means You can use your Points to reserve use of the VOI only during calendar years ending in an even digit and the word ODD means You can reserve use of the VOI only during calendar years ending in an uneven digit. You acknowledge and agree that the Points allocated to your VOI shall be renewed only in every even year and that You shall be entitled to use said Points in reserving use of the VOI only in such years.

5. FEES

You understand and agree that from and after closing You will be a member of the Association and therefore shall be responsible for your share of Condominium Fees, Vacation Fees, annual recurring use charges and any and all other expenses incurred in the operation of the Condominium under the terms of the Declaration. All amounts payable by You to the Association shall be paid by You in one annual POA Fee (defined in the Declaration). The current POA Fee is \$509.32. You also have to pay real property taxes on your VOI each year, which will be billed separately by the managing entity to You. The annual ad valorem taxes for the current year are estimated at \$83.30.

For the purpose of ad valorem assessment, taxation and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to Section 192.037, Florida Statutes.

The POA Fees, the amount, manner of payment, and the payment due date(s) are subject to change and will be determined annually by the Association's board of directors.

6. DEPOSITS

Pursuant to the Escrow Agreement ("*Escrow Agreement*"), the designated escrow agent is First Title of VA., Inc., 924 West Colonial Drive, Orlando, Florida 32804 ("*Escrow Agent*"). All Deposits made hereunder (i) shall be paid to Us and secured by a surety bond held by Escrow Agent in accordance with the Escrow Agreement and Section 721.08(5), Florida Statutes, or if the aggregate of the Deposits so secured exceeds the amount of the surety bond, then such deposits (ii) shall be held by Escrow Agent until the expiration of the cancellation period as provided above and provided You have not elected to exercise his/her cancellation rights thereunder. The Deposit shall consist of 100% of all funds or other property received from or on behalf of You and shall be secured by the surety bond or held by Escrow Agent in accordance with the preceding sentence until presentation of an affidavit by Us to Escrow Agent stating that the cancellation period has expired, construction is completed, and closing has occurred, at which time either (i) the surety bond shall cease to secure the deposit, or (ii) the Escrow Agent shall transfer the deposit to Us. Interest earned on the Deposits shall be paid to Us. All notices and claims of Yours with respect to this paragraph shall be sent to Escrow Agent at the address set forth above.

We have submitted or will submit the Property to condominium ownership under the terms of the Declaration. The Declaration and its exhibits describe the unit(s) of the Condominium and your VOI and specifies your voting rights, obligations to pay POA Fees and taxes, and other obligations as an owner of an interest in the Condominium. You understand and agree that You will be a member of the Association and You agree to be bound by the rules and provisions of the Governing Documents (as defined in the Declaration).

You understand that your VOI will be determined for all purposes by referring to the Condominium Drawings and the Declaration. You understand and agree that the Declaration grants to the Association's board of directors the right to place liens upon your VOI if You are in default or fail to pay POA Fees when due. You further acknowledge that your use of the units of the Condominium and your VOI is subject to the terms and conditions of the Declaration.

8. DEFAULT

Time is of the essence except where otherwise provided in this Agreement. If You breach any term or condition of this Agreement, You expressly waive notice of default or breach of any term of this Agreement. Upon your default, or breach for a term of thirty (30) days of any term or condition of this Agreement, all sums paid hereunder by You may be retained by Us as liquidated and agreed damages for breach of this Agreement or We may at our option declare the entire remaining unpaid balance of purchase price plus accrued interest thereon due and payable, and We shall be entitled to reasonable attorney's fees and all costs of collection, including court costs incurred in connection with your default to the extent allowable by law. You will defend and indemnify Us against all claims of real estate brokers and salesmen (other than brokers or salesmen We employ) due to acts of You or your representatives.

Upon Our breach of any term or condition of this Agreement, You may seek specific performance or elect to receive the return of your Deposit(s) without thereby waiving any action for damages resulting from Our breach; provided, however that You shall not be entitled to an award of consequential or special damages resulting from any such breach.

9. NO WARRANTIES

We make no warranties, express or implied, concerning the Property, the units of the Condominium, personal property, common elements or the limited common elements, except as provided by Chapter 718, Florida Statutes.

10. RADON GAS

Pursuant to Section 404.056(5), Florida Statutes, all sellers of buildings in Florida are required to give the following notice: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

11. INSULATION DISCLOSURE

Pursuant to 16 CFR 460.16, promulgated by the Federal Trade Commission, the Developer hereby discloses the following information concerning the insulation installed in the Property:

1. Type of insulation: Roof - Rigid insulation on 8" concrete slab. Exterior Walls - Batt/Blanket Thermal Insulation.
2. Thickness: Roof - 3.5" minimum average thickness. Exterior Walls - 6" batt/blanket.
3. R-Value: Roof - R-19 average value. Exterior Walls - R-19.

12. COMPLETION OF CONSTRUCTION

Construction is complete.

13. MODIFICATIONS AND CHANGES

Notwithstanding paragraph 18, We reserve the right to make changes in the Declaration for the purpose of correcting errors in the preparation and filing of all documents relating to the Condominium where necessary to establish the validity and enforceability of the Declaration. We reserve the right to add additional phases to the Condominium as provided therein. Notwithstanding paragraph 18 of this Agreement, We further reserve the right to make clerical or typographical corrections in any documents related to this Agreement.

14. FURNISHINGS

The timeshare Units will have furniture, appliances, equipment and accent furnishing substantially similar to, or of equal quality to, those shown or used in the models. Furnishings are common elements of the Condominium. Each owner is responsible for maintaining and replacing such furnishings as part of the POA Fees.

15. REFUND

In the event of cancellation during the ten (10) day cancellation period, We will refund to You all payments made under this Agreement, reduced by the proportion of any contract benefits You have actually received under this Agreement prior to the effective date of the cancellation, within twenty (20) days after receipt of notice of cancellation, or within five (5) days after receipt of funds from your cleared check, whichever is later.

16. RESALE DISCLOSURE

Any resale of this timeshare interest must be accompanied by certain disclosures in accordance with Section 721.065, Florida Statutes.

17. TERMINATION OF AGREEMENT WITH BLOCKED PERSONS

Under United States Presidential Executive Order 13224 (the "Executive Order"), We are required to ensure that We do not transact business with persons or entities determined to have committed, or pose a risk of committing or supporting, terrorist acts and those identified on the list of Specially Designated Nationals and Blocked Persons (the "List"), generated by the Office of Foreign Assets Control of the U.S. Department of the Treasury. The names or aliases of these persons or entities ("Blocked Persons") are updated from time to time. In the event We learn that Your name appears on the List, We reserve the right to delay the closing pending Our investigation into the matter. If We are advised and/or determine that You are a Blocked Person, We reserve the right to terminate this Agreement and/or to take all other actions necessary to comply with the requirements of the Executive Order. The provisions of this paragraph will survive closing and/or termination of this Agreement.

18. BINDING EFFECT

This Agreement is binding upon the parties hereto and their heirs, legal representatives, successors and assigns. This Agreement supersedes any and all understandings and agreements between You and Us, and You and We mutually agree that this Agreement represents the entire Agreement between You and Us.

19. SEVERABILITY

If any clause or provision of this Agreement shall be held invalid by court order or otherwise, the invalidity of such clause or provision shall not affect the validity of the remainder of this Agreement. The remaining provisions of this Agreement will continue to be fully enforceable in accordance with the terms hereof.

20. ADDITIONAL DOCUMENTS

You and We agree to execute any additional documents which may be needed to carry out the intent and purposes of the parties to this Agreement.

Contract No. 00126-1518153

Receipt of a completed copy of this Agreement is hereby acknowledged by You.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals on the day and year first above written.

NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THE CONTRACT.

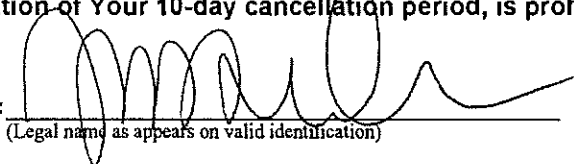
The Bonnet Creek Community Development District may impose and levy taxes or assessments, or both taxes and assessments, on this Property. These taxes and assessments pay the construction, operation, and maintenance costs of certain public facilities and services of the District and are set annually by the governing board of the District. These taxes and assessments are in addition to county and other local governmental taxes and assessments and all other taxes and assessments provided for by law.

You may cancel this Agreement without any penalty or obligation within ten (10) calendar days after the date You sign this Agreement or the date on which You receive the last of all documents required to be given to You pursuant to Section 721.07(6), Florida Statutes, whichever is later.

If You decide to cancel this Agreement, You must notify* Us in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to Wyndham Vacation Resorts, Inc., Attention: Account Servicing Operations-Rescission Department at P.O. Box 94443, Las Vegas, Nevada 89193 or 10750 West Charleston Boulevard, Suite 130, Las Vegas, Nevada 89135.

Any attempt to obtain a waiver of Your cancellation right is void and of no effect. While You may execute all closing documents in advance, the closing, as evidenced by delivery of the Deed or other document, before expiration of Your 10-day cancellation period, is prohibited.

BUYER:

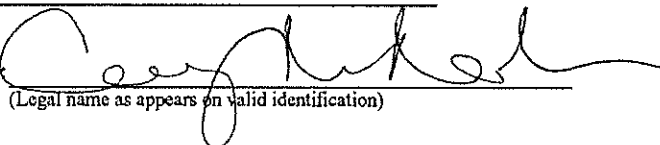


(Legal name as appears on valid identification)

PRINT NAME: Justin Nolen

DATE: JUL 3 1 2015

BUYER:



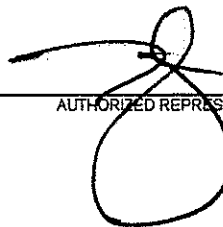
(Legal name as appears on valid identification)

PRINT NAME: Carolyn Nolen

DATE: JUL 3 1 2015

SELLER: WYNDHAM VACATION RESORTS, INC.

BY:



AUTHORIZED REPRESENTATIVE OF SELLER

*"Notify" shall mean that a written notice of cancellation is delivered, by any means which may include certified mail return receipt requested, to WYNDHAM VACATION RESORTS, INC. Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted from the place of origin if telegraphed. If given by means of a writing transmitted other than by mail or telegraph, the notice of cancellation shall be considered given at the time of delivery at the place of business of the developer.

Float

VOI

CLUB WYNDHAM® Plus
VACATION OWNERSHIP ASSIGNMENT AGREEMENT
AND USE RESTRICTION

00126-1518153
 Contract Number

THIS VACATION OWNERSHIP ASSIGNMENT AGREEMENT AND USE RESTRICTION ("*Assignment Agreement*") is made this 31st day of July, 2015 by and between Wyndham Vacation Resorts, Inc., a Delaware Corporation located at 6277 Sea Harbor Dr., Orlando, FL 32821 ("*Plan Manager*"), and Justin Nolen And Carolyn Nolen ("*Owner*").

WHEREAS, the Second Amended and Restated FairShare Vacation Plan Use Management Trust Agreement effective March 14, 2008, recorded or to be recorded in various jurisdictions including in the Office of the Circuit Clerk in Cleburne County, Arkansas, which document is incorporated herein by reference, as amended from time to time ("*Trust Agreement*"), sets forth the terms, restrictions and conditions of the FairShare Vacation Plan ("*Plan*") described therein as well as the obligations of the Plan Manager to those owners who have subjected their property to the Trust Agreement by assigning the use, occupancy and possessory rights in such property to the FairShare Vacation Plan Use Management Trust ("*Trust*") or who acquire property which has been previously subjected to the Trust Agreement and whose use, occupancy and possessory rights have previously been assigned to the Trust, all in accordance with the terms and conditions of the Plan; and

WHEREAS, the Owner is the buyer of a Vacation Ownership Interest ("*Property*") consisting of an undivided fee simple interest in FAIRFIELD ORLANDO AT BONNET CREEK RESORT ("*Home Resort*") located in Orlando, FL together with the Floating Use Rights and the allocation to Owner of symbolic Points ("*Points*") described in the Purchase and Sale Agreement ("*Contract*") # 00126-1518153 between the Owner and WYNDHAM VACATION RESORTS, INC. ("*SELLER*").

WHEREAS, the Owner desires to subject the above-described Property to the Trust Agreement and assign the use, occupancy and possessory rights in said Property to the Trust, all in accordance with the terms, restrictions and conditions of the Plan as set forth in the Trust Agreement.

NOW THEREFORE, in consideration of \$ Fee Waived paid by Owner to Plan Manager and the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Except as otherwise provided herein, capitalized terms shall have the same definition as set forth in the Trust Agreement. This Assignment Agreement, as well as the interest of the Trustee set forth herein, shall be subject to the prior rights in the Contract and/or Property of any mortgagee or secured party. Nothing contained herein shall contravene the obligation of Owner under his Contract or under any note and mortgage/trust deed or security agreement ("*Financing Documents*") executed in connection with the Owner's purchase of the Property.
2. Owner hereby subjects the Property to the Trust Agreement and assigns the use, occupancy and possessory rights in the Property to the Trust, to be administered in accordance with the terms, restrictions and conditions set forth in the Trust Agreement, and agrees that the Owner's Use Rights shall be subject to the terms and provisions of same. The foregoing assignment shall be effective even if the Home Resort has not yet been completed and available for occupancy. In such event, Owner shall nevertheless have the ability to use his or her Points (as defined in Paragraph 3 below) in accordance with the Plan to reserve alternate accommodations or other benefits ("*Alternate Usage*"), which Alternate Usage shall terminate when the Home Resort is available for occupancy.
3. Plan Manager shall assign Owner 238,000 Points, as defined in the Trust Agreement, which Points shall be used through the CLUB WYNDHAM Plus Program to reserve use of property subjected to the Trust in accordance with the provisions of the Trust Agreement. Said Points are symbolic of the value of Owner's Use Rights in the property and are to be used in each Even year. The Plan is a floating use plan.
4. Owner hereby assigns his use, occupancy and possessory rights in and to the Property to the Trust for the period of time this Assignment Agreement is effective and accordingly grants to the Trustee or its assigns and the Plan Manager the right to assign the use, occupancy and possessory rights in the Property on an annual basis or biennial basis, if applicable, to Members in the Plan in return for Owner's right to utilize his points in the CLUB WYNDHAM Plus Program in accordance with the terms and provisions of the Trust Agreement, and subject to any rights reserved to the developer under the Governing Instruments to which the Property is also subject.
5. Notwithstanding the assignment of the use, occupancy and possessory rights in the Property to the Trust, Owner shall retain his voting rights in the home owners association ("*HOA*") charged with managing the Home Resort and identified in the Owner's Contract for the period of time this Assignment Agreement is effective.
6. Owner, by subjecting the Property to the Trust Agreement and assigning the use, occupancy and possessory rights in the Property to the Trust, becomes a member of the Fairshare Vacation Owners Association ("*Association*") and as such agrees to abide by all requirements set forth in the Articles and Bylaws of the Association. Owner also has the right to vote his interest as a member of the Association.
7. Owner agrees to pay to the Trust on behalf of the Association an annual CLUB WYNDHAM Plus Assessment ("*Assessment*") for certain expenses attributable to the Plan and the Owner's HOA in accordance with the provisions of the Trust Agreement, which annual Assessment includes (i) Owner's share of the expenses associated with the operation and maintenance of the Plan,

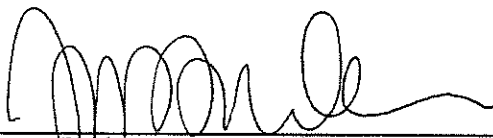
- 8. Owner shall have priority reservation rights at the Home Resort where the Owner's Property is located. Owner's priority reservation rights shall not be eliminated by the Trustee so long as this Assignment Agreement shall remain in effect.
- 9. This Assignment Agreement shall become effective on the date first written above.
- 10. If the Property is not complete as of the date of this Assignment Agreement and Owner is allowed usage of his Points in the Plan to make reservations for other accommodations or benefits, then the Plan Manager shall cause the above referenced HOA Fee portion of the Assessment to be delivered to the Plan Manager as an Alternate Usage Fee in consideration of such usage by Owner. When the construction of the Property is completed, the Plan Manager shall cause the HOA Fee portion of the Assessment to be deposited into the Escrow Account and then delivered to the HOA, as provided hereinabove.
- 11. This Assignment Agreement and all rights granted hereunder may be terminated by Owner, or by Owner's successors or assigns, at any time; however, any such termination shall be subject to any outstanding reservations against the Property. Election to terminate will be noted but all reservations existing as of the termination date will be honored. No new reservations will be accepted on or after the termination date. If this Assignment Agreement is terminated, future access to the Plan will require approval of the Plan Manager and include a conversion fee. If not terminated sooner, termination will occur on the earlier of the following dates:
 - a) termination of the timeshare and/or condominium regime(s) in which the Property is located in accordance with the Governing Instruments establishing said regime(s); or
 - b) termination of the plan; or
 - c) termination by Trustee after Trustee has determined that the Property has been rendered unsuitable for continued use in the Plan; or
 - d) termination by Trustee after Trustee has determined that the Contract has been cancelled based on Owner's default or;
 - e) termination by Trustee after Trustee has determined that Owner's CLUB WYNDHAM Plus Account is delinquent and Owner has failed to cure such delinquency in accordance with the Governing Instruments and as provided by Trustee.

Upon termination, Owner's Points will be extinguished and Owner will no longer have the right to make reservations in properties subjected to the Trust Agreement and all use, occupancy, and possessory rights in the Property shall automatically revert to the Owner.

- 12. Upon termination of this Assignment Agreement or in the event Owner defaults on his obligation under his Contract or under his Financing Documents resulting in the termination of said Contract or the acquisition of the Property by his mortgagee or secured party, this Assignment Agreement shall be deemed terminated and cancelled and all rights of the Owner hereunder shall cease. Upon such termination, Plan Manager shall cause the use, occupancy and possessory rights in the Property to be re-assigned back to Owner or his acquiring mortgagee/secured party, subject to any Owner commitments or confirmed reservations in the Property in favor of another Member which may have been made pursuant to the Plan. Any fees due the Trust by Owner shall be deducted from the assessments made by Owner at date of termination. Upon such termination, all benefits and obligations of Owner under his Contract and Financing Documents shall continue in force and effect.
- 13. The CLUB WYNDHAM Plus VIP Program ("*VIP Program*") and its accompanying benefits are made available to CLUB WYNDHAM Plus members who have achieved certain eligibility criteria as set forth in the CLUB WYNDHAM Plus Member's Directory ("*Member's Directory*"). Only Points associated with properties and other vacation ownership interests purchased directly from or through Wyndham Vacation Resorts, Inc., its affiliates or as otherwise established by Wyndham Vacation Resorts, Inc., are eligible to be counted toward VIP eligibility. See the current Member's Directory for the minimum Points required to participate in the VIP Program. In the event Owner subsequently sells the Property to a third party purchaser, the Points associated with the Property will not be eligible to be counted toward VIP eligibility by such purchaser. Wyndham Vacation Resorts, Inc., in its sole discretion, with or without prior notice, may unilaterally expand or limit the point eligibility criteria for the VIP Program. The sale of the Property to a third party purchaser does not automatically transfer to such purchaser any CLUB WYNDHAM Plus benefits.
- 14. The parties hereto agree to execute any additional instruments which may be necessary or convenient to carry out the intent and purpose of this Assignment Agreement.

The terms and conditions of this Assignment Agreement shall survive deed of the Property to Owner.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

OWNER: 

 (Legal name as appears on valid identification)

WYNDHAM VACATION RESORTS, INC., PLAN MANAGER

PRINT NAME: Justin Nolen _____

By: 

EXHIBIT D

SECURITY AGREEMENT

Member Number [Redacted]
Contract Number 00219-1600048
Contract Date 01-05-2016

CLUBWYNDHAM® ACCESS VACATION OWNERSHIP PLAN
RETAIL INSTALLMENT CONTRACT
PURCHASE AND SECURITY AGREEMENT
(Florida)

Wyndham Vacation Resorts, Inc., a Delaware corporation ("**Seller**"), agrees to sell to **WINDY KELLEY PAULA LITTON and CARA KELLEY** ("**Owner**") a membership interest ("**Ownership**") in PTVO Owners Association, Inc., a non-stock, non-profit Delaware corporation ("**Association**"), which Ownership includes the right to participate in the ClubWyndham Access Vacation Ownership Plan ("**Club**") and the right to use and occupy Club Accommodations. If more than one person executes this Agreement as Owner, the liability of each Owner under this Agreement shall be joint and several. These rights are denominated in Points and Owner agrees to purchase the Ownership for a purchase price of \$206,668.98 (the "**Purchase Price**") on the following terms and conditions:

Points consisting of the following:

Perpetual Points: 1,264,000 Annual X

"**Initial Use Year**": January 1 following the Contract Date above.

A. BENEFITS AND NATURE OF OWNERSHIP

1. Ownership. Owner is a member of the Association, and is entitled: (a) to use points to reserve the use of accommodations in the Club ("**Club Accommodations**"), (b) to vote for directors of the Association, (c) to vote on major decisions of the Association, and (d) through the Club and the Association, to participate in the ownership of the assets of the Association. At the closing of the purchase of the Ownership as set forth in Section 32 below, (i) Owner will receive an Ownership Certificate evidencing the Ownership (which will delineate, among other things, Owner's Points), and (ii) Owner's name and the other information concerning the Ownership will be entered into the permanent records of the Association ("**Club Ownership Register**"). The Seller is Wyndham Vacation Resorts, Inc., 6277 Sea Harbor Dr. Orlando, FL 32821. Each Ownership constitutes a Florida timeshare estate under Chapter 721, Florida Statute. The Club is a multi-site timeshare plan called ClubWyndham Access Vacation Ownership Plan. The address of this timeshare is 6277 Sea Harbor Dr. Orlando, FL 32821. Refer to the ClubWyndham Access Public Offering Statement ("**Public Offering Statement**") accompanying this Agreement for a list of Club Accommodations which are under construction (if any) and estimated completion dates.

2. Duration of Ownership. Ownership shall be effective from the date on which the Closing described in Section 32 below occurs. Owner may use Points to obtain reservations and other Club benefits starting with Owner's Initial Use Year as set forth above. Ownership shall be perpetual.

3. Transferability of Ownership. Subject to the terms and provisions of the Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easement for ClubWyndham Access Vacation Ownership Plan ("**Declaration**"), the Ownership (and the Points) may be transferred entirely or partially at any time during their term and without limitation to the number of transfers, through sale, gift, inheritance, dissolution of marriage or by any operation of law, subject to the following terms: (a) a reasonable Ownership transfer fee has been paid to the Association; (b) all payment or charges due to the Association, Seller or any Holder or Co-Holder (as those terms are defined in Section 16) of this Agreement are current; (c) the Points transferred and the Points retained, if any, must each be enough Points to satisfy the then Minimum Points Requirement as established by Seller; (d) the Association must consent to the transfer which consent shall not be unreasonably withheld, conditioned or delayed; (e) the transfer must be entered in the Club Ownership Register; (f) all aspects of the transfer must comply with applicable law; and (g) if any financed amounts are still owing to Seller or to any Holder or Co-Holder, (i) the Owner must obtain the written consent of the Seller or any Holder or Co-Holder to such proposed transfer which consent shall not be unreasonably withheld, conditioned or delayed, (ii) the transferee must satisfy the then current credit requirements of the Seller or any Holder or Co-Holder, and (iii) transferee may be charged a reasonable financing transfer fee. Owner and Seller each acknowledge and agree that Seller has entered into this Agreement in consideration of and reliance upon the creditworthiness and reliability of Owner.

B. ACCOMMODATIONS AND OTHER MATTERS

4. Club Accommodations. Owner shall have access to all existing and future Club Accommodations and the properties within which those Club Accommodations are located ("**Club Properties**"), as well as all other accommodations owned or operated by or associated with Club, wherever located. Provided however the location and specific nature of the Club Accommodations shall be subject to change in accordance with the Club Instruments (as defined below).

5. Participation of Owner in Association Governance. The Articles of Incorporation, By-laws, and Regulations of the Association and the Declaration provide, among other things, for: (a) meetings of, and votes by the parties who hold Ownership in the Association (called "**Owners**"); (b) election of directors; and (c) use rights in Club Accommodations.

6. Control of Club Accommodations by the Association. The Association or one or more Trusts each of whose beneficiary is the Association, shall hold the deed or the lease to each Club Accommodation, free of the effects of debt encumbrances (or with a non-disturbance agreement in place), and subject to the Declaration which, among other things: (a) is recorded or filed against each Club Accommodation; (b) provides for dedication of the Club Accommodation to the Club; and (c) establishes the Points as the currency of use in the Club. Notwithstanding the Association's or a Trust's ownership of Club Accommodations in the various Club Properties, in many instances, not all of the accommodations at a Club Property will be or become Club Accommodations and therefore, the Association will have limited, if any, right to control that Club Property.

7. Power of Attorney. The power to direct the Trustee as to all matters shall be exercised solely by the Association and by the Seller acting in accordance with the Club Instruments. The Association and the Seller may exercise that power of direction without the consent of the Owner. To the extent that the joinder of the Owner may be required to validate any act or thing done by the Association or the Seller pursuant to this power of direction, each Owner, by entry in the Club Ownership Register, grants to the Association and to the Seller a special power of attorney for these purposes, to the extent permitted by applicable law, coupled with an interest that cannot be revoked as set forth in Section 7.5 of the Declaration.

8. The Club. The Club is governed by, among other things, the Declaration; the Articles of Incorporation and By-laws for the Association; Trust Agreements, if any; and the regulations, as each may be lawfully amended or supplemented from time to time (all such governing documents, as so amended, "**Club Instruments**"). In addition, because many Club Accommodations are located within Club Properties that are themselves operated as condominiums or timeshare programs, those Club Accommodations are subject to declarations, articles of incorporation and by-laws for the association managing such property and the rules and regulations of the condominium and/or timeshare programs being operated thereon ("**Club Property Instruments**"). The Club Instruments, together with the Club Property Instruments, will govern any aspects of ownership, use and operation of the Club and the Club Accommodations, including, without limitation, (a) reservations; (b) the number of persons permitted to occupy each Club Accommodation; (c) guest policies; (d) fees; (e) rental of Club Accommodations by Owner and by the Club and others; (f) charges for use of specific facilities at each Club Property; (g) personal conduct and behavior; (h) check-in and check-out times; and (i) care and maintenance of Club Accommodations and related facilities and amenities. The Ownership conveyed by this Agreement shall be held by Owner subject to each of the provisions of the Club Instruments and the Club Property Instruments.

9. Development and Management of Club. Seller has developed the Club and has caused accommodations in Club Properties to be transferred to the Association or a Trust for the benefit of the Association in exchange for the proceeds of sale as well as exclusive marketing rights, and the right to add additional properties. Pursuant to a Management Agreement between Seller and/or one or more affiliates of Seller, and the Association, Seller or such affiliate will also manage the Club, the Association and those Club Properties which are not part of other timeshare or condominium programs.

C. POINTS USE

10. Club Program. The benefits and obligations of Ownership are determined by the number and types of Points assigned to the Ownership.

(a) Use. Points may be used to reserve Club Accommodations that are available through the Club on a space available basis. The number of Points required for occupancy of any Club Accommodation will be based on numerous factors, including, without limitation, the season, location, unit size and type, and day of the week.

(b) Issuance. Points are renewed annually (or, in the case of Biennial Points, every other year) throughout the term of the Ownership, at the beginning of Owner's Use Year, in the total number of Points purchased by Owner.

(c) Additional Points. Owner may purchase additional Points from the Seller at any time after the date of this Agreement, subject to the following: (i) the Points are available; (ii) Owner is not in default under this Agreement; (iii) the Owner is in good standing with the Association; (iv) the then current price is paid; and (v) if Seller finances the purchase, Owner satisfies Seller's then current credit requirements.

D. QUALIFICATIONS AND CONDITIONS TO PURCHASE ASSOCIATION MEMBERSHIP

11. Legal Capacity. Owner represents that Owner is a person or entity with the legal capacity to enter into this Agreement.

12. Non-Investment Purchase. Owner represents that Owner is purchasing an Ownership for the purpose of recreational and social use, and not for financial profit.

E. CONTRACTUAL STANDARDS

13. Liability Limitations. Owner agrees that Owner and Owner's family or guests assume all risks of loss or damage to persons or property in using the Club Accommodations and the Club Properties in which they are located, except that this limitation of liability shall not apply in cases of negligence of the Seller, Manager or Association. Owner also agrees to maintain liability and property damage insurance in connection with any motor vehicle(s) brought to the Club Accommodations, in amounts customarily carried on such vehicle(s).

14. Owner Default. Owner shall be in default under this Agreement if Owner fails to pay on time, keep any promise, or fulfill any agreement or obligation contained herein or in any of the documents or instruments referenced herein. Without limiting the scope of the prior sentence, obligations include obtaining the written consent of Seller or any Holder or Co-Holder to transfer any part of the Ownership which is subject to outstanding amounts financed and owed to Seller or any Holder or Co-Holder. In the event of a default by Owner, Owner shall not be entitled to reserve, use, or occupy any Club Accommodation, or to exercise any other rights, benefits, or privileges appurtenant to Owner's Ownership.

(a) Owner's default in the performance of any of Owner's obligations under this Agreement on or before Closing shall entitle Seller to terminate this Agreement immediately and all of Owner's rights, benefits, and privileges hereunder. Upon such termination, Seller shall cause Escrow Agent to deliver to Seller, all sums of money previously paid by Owner hereunder as liquidated damages and not as a penalty as Seller's exclusive remedy for Owner's default. To the extent Owner has paid any assessments or other amounts to the Association prior to Closing, those amounts shall also be forfeited and retained by the Association.

(b) If Owner fails to timely perform any of Owner's obligations under this Agreement or the Club Instruments after Closing, Owner shall be in default and Seller or any Holder or Co-Holder may enforce the Seller Security Interest (as described in Section 15 of this Agreement) against Owner's Ownership (and the proceeds thereof) in accordance with this Agreement. Upon the occurrence of any such failure, Seller or any Holder or Co-Holder shall give Owner written notice thereof and if Owner has not cured the applicable failure within thirty (30) days after Seller or any Holder or Co-Holder gives such notice, Owner shall be in default under this Agreement and Seller or any Holder or Co-Holder may enforce the Seller Security Interest in accordance with Section 15 below.

15. Remedies/Security Interest. To secure compliance with Owner's obligations hereunder, Owner hereby grants Seller and any Holder or Co-Holder a security interest ("**Seller Security Interest**") in the Ownership purchased under this Agreement and all proceeds therefrom (collectively the "**Collateral**"). The Seller Security Interest constitutes a lien on the Collateral. The Seller Security Interest and lien shall remain in effect as long as there are obligations of Owner in favor of Seller or any Holder or Co-Holder to be fulfilled under this Agreement. Notwithstanding Seller, the Association, or any Holder or Co-Holder of this Agreement, of any default or breach by Owner shall constitute a waiver of the same or any other default or breach by Owner or any other party listed as owner in the future. Each Owner signing below hereby appoints each Owner signing below as his or her agent for dealing with Seller and any Holder or Co-Holder of this Agreement for any purpose. Upon the occurrence of a default described in Section 14 above, Seller or any Holder or Co-Holder of this Agreement may choose to the extent permitted by applicable law, one or more of the following remedies: (a) declare the entire unpaid balance of the Purchase Price and Processing Fee immediately due and payable, unless prohibited by law; (b) foreclose the lien created by the Seller Security Interest and sell or retain the Ownership in satisfaction of Owner's obligations hereunder, or exercise any other right under Article 9 of the applicable Uniform Commercial Code; (c) terminate the Ownership and retain all amounts previously paid by Owner as compensation for damages incurred in proceeding pursuant to this Agreement (Seller and Owner agree that in such case it would be impractical or extremely difficult to fix the actual damage and therefore, the amounts previously paid by Owner are a fair and reasonable estimate of Seller's actual damages for such default); (d) suspend use rights, including, but not limited to, cancelling any existing and future reservations; (e) sue for the unpaid balance due hereunder; (f) any request to transfer Owner's Ownership and Points in the Club Ownership Register; and/or (g) pursue any other remedy allowed by law. Seller cannot terminate this Agreement or foreclose against the Ownership without the consent of the Holder or Co-Holder of any right to the unpaid balance due hereunder.

16. Additional Creditor. The right to receive payment of the Purchase Price and Processing Fee under this Agreement belongs to Seller, but could be assigned, collateralized or absolutely, to another creditor (such creditor is referred to herein as a "**Holder**" or "**Co-Holder**"). This Agreement, together with all security interests, rights of enforcement and payment due hereunder, is freely assignable by Seller, its successors and assigns.

NOTICE:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR (OWNER) COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR (OWNER) SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR (OWNER) HEREUNDER.

1 General Provisions. Except as otherwise set forth under Section 42 entitled "Purchaser's Nonwaivable Right to Cancel" below, any written notice required or desired to be given hereunder shall be deemed given when personally delivered or after three (3) days deposit in the U.S. Mail, first class postage prepaid or one (1) day after acceptance by a nationally recognized overnight courier service, addressed to the address given herein or such subsequent address as is given by proper notice or when sent by facsimile to any facsimile number given by one party to the other. This Agreement, and any and all other documents executed at the same time as this Agreement, constitutes the entire agreement between the parties hereto. No representation or warranties, oral or written, other than the representations set forth in said documents, have been relied upon by the parties. Except as otherwise provided herein, this Agreement shall be binding upon and benefit the heirs, executors, administrators and successors of each of the parties. If any provision of this Agreement shall be found to be invalid, the remaining provisions shall nevertheless remain in full force and effect. Unless terminated in accordance with the terms of this Agreement, this Agreement shall survive the issuance of the Ownership and the Ownership Certificate and the registration thereof in the Club Ownership Register and shall survive the final payment toward the purchase hereunder.

18. Owner Responsibility. Transfer or abandonment of the Ownership does not relieve Owner of Owner's obligations hereunder unless such transfer or abandonment of the Ownership is agreed to by the Association, the Seller and/or any Holder or Co-Holder of any right to the unpaid balance due under this Agreement.

19. Modifications and Changes. Seller reserves the right to make changes in the Club Instruments for the purpose of correcting errors in the preparation and filing of all documents relating to the Club where necessary to establish the validity and enforceability of the Club Instruments. Seller reserves the right to add additional real property interests to the Club as provided in the Club Instruments. Seller further reserves the right to make clerical or typographical corrections in any documents related to this Agreement.

F. ASSESSMENTS - ASSOCIATION'S SECURITY INTEREST

20. Regular Assessments. The current annual Regular Assessment for Owner's Ownership is **\$6,496.96** (U.S. Funds), based on the formula and rate of annual Regular Assessments currently established by the Association pursuant to the Club Instruments. Regular Assessments may be increased annually subject to the Club Instruments. Regular Assessments shall be used for Club Costs, including maintenance and operation of Club Accommodations (including for reserves) and operation and management of the Club, all as more particularly described in the Club Instruments.

21. Special Assessments and Taxes. The Association may levy special assessments subject to the Club Instruments. The Owner is also responsible for any tax that might be assessed by a civil taxing authority on the purchase of Owner's Ownership or the use of any Club Accommodations.

For the purpose of ad valorem assessment, taxation and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to Section 192.037, Florida Statutes.

22. Individual Charges. Owner must pay separately for extra benefits including, but not limited to, if available, food, storage, extra maid service, purchase of goods, use of equipment, furnishings or facilities not normally provided as part of the Club Accommodation or the Club Property in which it is located, and exchange program services if available.

23. No Warranties. SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY CONCERNING THE CLUB ACCOMMODATIONS OR CLUB PROPERTIES, INCLUDING ANY WARRANTY STATUTORY OR OTHERWISE, OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS MAY BE REQUIRED BY LAW AS OF THE DATE HEREOF. ACCORDINGLY, ANY REPAIRS TO THE CLUB ACCOMMODATIONS OR CLUB PROPERTIES NOT COVERED BY RESERVES MAY RESULT IN A SPECIAL ASSESSMENT.

24. Damage Charges. Owner must pay, as an Individual Charge, any cost of repair or replacement for any damage caused by Owner, Owner's family or guests, or anyone else that Owner allows or permits to occupy a Club Accommodation during Owner's reserved use period.

25. Association's Remedies/Security Interest. To secure compliance with the Club Instruments, Owner hereby grants to the Association a Security Interest (the "**Association Security Interest**") in Owner's Ownership and all proceeds thereof (i.e., the Collateral), which Association Security Interest is subject to and subordinate to the Seller Security Interest. The Association Security Interest shall remain in effect as long as Owner's Ownership remains in effect. Upon a breach by, or failure of, Owner to perform any of Owner's obligations under the Club Instruments, which breach or failure extends beyond any notice, cure and/or grace period specifically provided for in the Club Instruments, the Association may, among other things (the Club Instruments describe all the Association's rights and remedies for an Owner default thereunder): (a) foreclose the lien provided by the Association Security Interest, subject to any Seller Security Interest then in existence, and sell or retain Owner's Ownership in satisfaction of Owner's obligations to the Association or exercise any other right under Article 9 of the applicable Uniform Commercial Code; (b), if the Seller Security Interest no longer exists, terminate the Ownership; (c) suspend the Owner's rights to use the Points ascribed to Owner's Ownership and in certain instances, the Owner's rights to occupy a Club Accommodation for which the Owner had previously obtained a reservation; (d) sue the Owner personally for all amount due to the Association; (e) deny request to transfer Owner's Ownership and Points in the Club Ownership Register; and/or (f) pursue any other right or remedy allowed by law, subject, however, to the Seller Security Interest (if still in effect) and subject to the terms and provisions of the Club Instruments.

G. PURCHASE PRICE, FINANCE CHARGE, AND PAYMENTS

26. Purchase Price. Owner agrees to pay Seller the Purchase Price in U.S. Funds (less other Credits/Discounts) together with a Closing Fee, a document processing fee ("**Processing Fee**") described in Section 29 Credit Terms and the credit service charge ("**Finance Charge**") as described in Section 30 below. Payments shall be credited first on the interest then due, then on principal. Interest will begin to accrue on the date hereof. **This Installment Contract provides for an interest rate of Eleven 49/100 (11.49%) per annum.** This amount is required to be included in the calculation of the Annual Percentage Rate and Finance Charge.

27. Closing Fee. Owner agrees to pay a **\$30.00** Closing Fee, which Seller will pay to First American Title Insurance Company.

28. Processing Fee. Owner understands and agrees to pay Seller a Processing Fee of **\$349.00** which is charged to all buyers whether paying in cash or buying on credit to cover various processing services related to the sale including administration and preparation of various documents related to the sale. These services are separate and distinct from the services that Seller performs as settlement agent. Together, the Purchase Price, Processing Fee, Closing Fee and Finance Charge constitute the "**Total Sale Price**".

Contract Number **00219-1600048**

29. Credit Terms. Disclosures Required By: Federal Truth In Lending Act, and State Law. Creditor: WYNDHAM VACATION RESORTS, INC., 6277 Sea Harbor Dr. Orlando, FL 32821.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate:	The dollar amount the credit will cost you:	The amount of credit provided to you or on your behalf:	The amount you will have paid after you have made all payments as scheduled:	The total cost of your purchase on credit including your down payment of:
11.49	\$43,149.70	\$62,156.30	\$105,306.00	\$144,861.68: \$250,167.68

Your payment schedule will be:

No. of payments:	Amount of Each Payment:	Payments are due monthly, on the same date each month
120	\$877.55	Beginning: 02-19 2016

AP: \$190,376.00 Contract No. 000401308259 001851403576 , 0.00 \$144,501.30

Late Charge: You will be charged a late charge of \$10.00 or the maximum permitted by applicable law for each payment that is more than ten (10) days late.

Security Interest: You are giving the Seller and the Association a security interest in the Ownership being purchased.

Prepayment: If you prepay the balance due, there will be no penalty.

Variable Rate: By enrolling in the Auto Pay Plan ("APP"), Owner's Annual Percentage Rate disclosed above reflects a reduction of one-half percent (½%) (the "Reduction") over the Annual Percentage Rate that would otherwise apply. The Annual Percentage Rate disclosed above will automatically increase by the amount of the Reduction in the event any one of the following occurs: (a) Owner discontinues participation in the APP, (b) Owner's financial institution is unable or unwilling to participate or (c) Seller or an Holder or Co-Holder discontinues Owner's participation for reasonable cause. Any increase in the Annual Percentage Rate will take the form of higher payment amounts. For example, if your loan were for \$10,000.00 at 17.49% for 7 years and the rate increased to 17.99%, your regular payment would increase by approximately \$ 0.

Contract Reference: Owner should refer to this Agreement for information about nonpayment, default, the right to accelerate maturity of Owner's payment obligation, prepayment rebates, penalties, and other creditor remedies.

ITEMIZATION OF AMOUNT FINANCED

1. Gross Purchase Price	\$ 316,000.00	6. State and Local Taxes:	\$ 0.00
2. Discounts/Other Credits:	\$ 109,331.02	7. Closing Fee (Paid to Escrow Agent):	\$ 30.00
3. Payments/Trade In:	\$ 144,501.30	8. Total Cash Price:	\$ 207,047.98
Net Cash Price (Paid to Seller):	\$ 206,668.98	9. Down Payment:	\$ 144,891.68
5. Processing Fee (Paid to Seller):	\$ 349.00	10. Amount Financed:*	\$ 62,156.30

*If applicable, includes refinancing an existing loan plus any unpaid interest.

30. Change in Law. If a law, which applies to this Agreement and which sets maximum finance charges, is finally interpreted so that the interest or other charges collected or to be collected in connection with this Agreement exceed the permitted limits, then: (i) any interest and/or other charges will automatically be reduced by the amount necessary to reduce the interest rate and/or charges to the permitted limit, retroactively effective as of the date of this Agreement, and as though this Agreement originally provided for the reduced interest rate, finance and/or other charge, as the case may be; and (ii) any sums already collected from Owner which exceeded permitted limits will be refunded to Owner. The Holder or Co-Holder may choose to make this refund by reducing the principal Owner owes under this Agreement or by making a direct payment to Owner. If a refund reduces principal, the reduction will be treated as a partial prepayment.

31. Other Charges. The Association, the Seller and any Holder or Co-Holder each have the right to collect charges per dishonored check up to the maximum permitted by applicable law. For late or missed payments, to the extent permitted by law, you may also be charged any cost incurred in the attempted collection of a delinquent assessment, including reasonable collection agency fees which may be based on a percentage amount over and above the delinquent assessment.

H. MISCELLANEOUS PROVISIONS

32. Effectiveness of Agreement/Closing. This Agreement will become effective upon execution by all parties and shall be deemed to have closed (the "Closing") when all of the following conditions have occurred unless waived by Seller: (a) any applicable rescission period has expired; (b) the Owner has paid to Seller a down payment equal to not less than ten percent (10%) of the sum of the Purchase Price and the Processing Fee in immediately available funds; and (c) Seller has sufficient Points to deliver to Owner. Upon satisfaction of the conditions precedent to Closing set forth in the immediately preceding sentence, Seller represents and warrants that the transfer provided herein complies fully with Section 721.06, *Florida Statutes*. In no event will the Closing occur later than the first anniversary of the Contract Date and if Closing has not occurred on or prior to the date of the first anniversary of the Contract Date, this Agreement shall be deemed automatically terminated and of no further force and effect. In the event this Agreement is automatically terminated in accordance with the provisions of the immediately preceding sentence and the Closing does not occur through no fault of Owner then within fifteen (15) days after the first anniversary of the Contract Date, Owner may request Seller to refund to Owner all funds paid by Owner under this Agreement.

- 10. This Assignment Agreement and the terms and conditions of the Trust Agreement shall be binding upon the Owner, his heirs, successors and assigns, provided, however, the application of this covenant on the Ownership may be terminated in accordance with paragraph 9 above, or shall terminate automatically if and when the Ownership shall be held by the developer, seller or Wyndham Vacation Resorts, Inc. ("**Wyndham**") subsequent to conveyance to Owner.
- 11. Upon termination of this Assignment Agreement or in the event Owner defaults on his obligation under his Contract or under his Financing Documents resulting in the termination of said Contract or the acquisition of the Ownership by his mortgagee or secured party, this Assignment Agreement shall be deemed terminated and cancelled and all rights of the Owner hereunder shall cease. Upon such termination Plan Manager shall cause the use, occupancy and possessory rights in the Ownership to be re-assigned back to Owner or his acquiring mortgagee/secured party, subject to any Owner commitments or confirmed reservations by another Plan participant which may have been made pursuant to the Plan. Any fees due the Trust by Owner shall be deducted from the assessments made by Owner at the date of termination. Upon such termination, all benefits and obligations of Owner under his Contract and Financing Documents shall continue in force and effect.
- 12. The CLUB WYNDHAM Plus VIP Program ("**VIP Program**") and its accompanying benefits are made available by Wyndham to CLUB WYNDHAM Plus members who have achieved certain eligibility criteria as set forth in the CLUB WYNDHAM Plus Member's Directory ("**Member's Directory**"). Only Points associated with the Ownerships purchased directly from or through Wyndham or Points associated with other vacation ownership interests with developer or management affiliations with Wyndham are eligible to be counted toward VIP eligibility. See the current Member's Directory for the minimum Points required to participate in the VIP Program. In the event Owner subsequently sells the Ownership to a third party purchaser, the Points associated with the Ownership will not be eligible to be counted toward VIP eligibility by such purchaser. Wyndham, in its sole discretion, with or without prior notice, may unilaterally expand or limit the point eligibility criteria for the VIP Program. The sale of the Ownership to a third party purchaser does not automatically transfer to such purchaser any CLUB WYNDHAM Plus benefits.
- 13. The parties hereto agree to execute any additional instruments which may be necessary or convenient to carry out the intent and purpose of this Assignment Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

DocuSigned by: Windy Kelley DocuSigned by: Paula Litton
 OWNER: _____ WYNDHAM VACATION RESORTS, INC., PLAN MANAGER
8C998313CCF1401...
 (Legal name as appears on valid identification)

DocuSigned by: Valerie Kirby
 PRINT NAME: Windy Kelley Paula Litton B: _____
1C16F117211247C... Authorized Representative

DocuSigned by: Cara Kelley
 OWNER: _____
 (Legal name as appears on valid identification)

PRINT NAME: Cara Kelley

