



**RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK,
AND INDEMNIFICATION AGREEMENT FOR OCEAN ACTIVITIES (the "Agreement")**

In consideration of Trilogy Excursions (the "Activity Provider") allowing me to participate in one or more of the ocean activities described in Schedule 1 attached hereto (each, an "Ocean Activity", and collectively, the "Ocean Activities"), I, the undersigned participant (the "Participant"), hereby state that I have read this Agreement completely and carefully, and further understand and agree to the following:

INHERENT RISKS: Each Ocean Activity involves numerous obvious and non-obvious inherent risks, dangers and hazards, including but not limited to, those more specifically described on Schedule 1 (collectively, the "Risks"), which can result in serious physical, mental and/or emotional injury, disability, death, property damage and/or other losses to the Participant. These Risks exist by the very nature of the Ocean Activity and cannot be eliminated without jeopardizing the essential qualities of the activity. In addition, each Ocean Activity may involve being in remote areas for extended periods of time, with limited or no access to communications, transportation or emergency medical assistance or facilities. Such areas may contain natural or man-made Risks, including, but not limited to, hazardous surface and subsurface conditions, which cannot be anticipated, identified, controlled, minimized and/or eliminated. Further, while the Activity Provider will seek to provide a reasonable level of safety and instruction to the Participant, at times warnings or directions given may be inadequate, and/or the equipment being used may fail and/or malfunction, despite the exercise of reasonable care.

RELEASE, WAIVER, ASSUMPTION OF RISK AND INDEMNIFICATION: In consideration of the Activity Provider allowing my participation in any and all Ocean Activities, I hereby agree on behalf of myself, my representatives, heirs, relatives, family members, dependents, executors, administrators, successors, assigns and anyone asserting claims by or through me, as follows:

1. **RELEASE AND WAIVER:** I hereby release, waive liability, discharge, hold harmless and agree not to initiate any claims, demands or causes of action against Trilogy Corporation dba Trilogy Excursions, Coon Brothers, Inc., C & Sea Ocean Sports, Inc., Ka'anapali Queen, Inc., Cocoon T-5 LLC, Maka Kai Charters, Inc., and Maui Navigation Company, Ltd., (collectively, the "Releasees"), and each of Releasees' parents, subsidiaries, affiliates, successors and assigns and their respective directors, officers, employees, members, insurers, agents and/or representatives regarding any and all liability for any injury, damage, loss and/or expense arising out of or resulting from, in whole or in part, my participation in any and all Ocean Activities, whether or not caused, in whole or in part, by the negligence of Activity Provider or otherwise to the fullest extent permitted by law.

2. **ASSUMPTION OF RISK:** I understand and acknowledge that each Ocean Activity is an inherently dangerous activity, and despite the Risks identified herein, as well as any and all Risks not expressly delineated or currently known, voluntarily elect to participate in the Ocean Activity. I also understand the need for me to comply with all crewmember and Ocean Activity staff safety instructions given before and during the Ocean Activities, and to remain alert at all times while participating in the Ocean Activities to minimize the risk of injury to myself and others. I hereby accept and assume full responsibility for any and all such Risks, which can result in serious physical, mental and/or emotional injury, disability, death, property damage and/or other losses arising out of or resulting from, in whole or in part, my participation in any and all Ocean Activities, whether or not caused, in whole or in part, by the negligence of Activity Provider or otherwise.

3. **INDEMNIFICATION:** I hereby agree to defend, indemnify and hold harmless Activity Provider against any and all claims, demands, causes of action, liabilities, judgments, settlements, interest, awards, penalties, fines, costs, or expense of any kind, including attorneys' fees, and any fees and costs of enforcing any right to indemnification under this Agreement, arising out of or resulting from, in whole or in part, my participation in any and all Activities, whether or not caused, in whole or in part, by the negligence of Activity Provider or otherwise.

MY CONDITION/MEDICAL INFORMATION/CARE: I attest that I have no knowledge, or reason to know of, any physical or mental limitations, conditions or other restrictions that would make my participation in any Activity inadvisable. I further attest that I have the necessary skill level to participate responsibly and safely in each Activity. I understand that persons with pre-existing medical conditions, including but not limited to: heart problems, recent surgery, pregnancy, auto-immune diseases, compromised immune systems, ear, back, knee or shoulder problems, should consult his/her physician before engaging in any Ocean Activity. Further, I hereby consent to receive first aid and/or medical treatment, which may be deemed advisable by the Activity Provider or Activity Provider's employees, agents or representatives, or by medical professionals, in the event of injury, accident and/or illness while participating in any Activity, but acknowledge that the Activity Provider or Activity Providers shall have no duty, obligation or liability arising out of the provision of, or failure to provide, first aid and/or medical treatment.

GENERAL PROVISIONS

4. **ENTIRE AGREEMENT/SEVERABILITY:** This Agreement constitutes the entire agreement between the Participant and Activity Provider with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

5. **CHOICE OF LA W/FORUM SELECTION:** This Agreement shall be governed by the laws of the State of Hawai'i without giving effect to any choice or conflict of law provision or rule of such state, and construed broadly to provide a release, waiver, assumption of risk and indemnification agreement to the fullest extent permissible under the law. State and federal courts in Hawai'i shall have the exclusive jurisdiction and venue for any claims, demands or causes of action arising under this Agreement.

BY SIGNING, I ACKNOWLEDGE THAT I HAVE FULLY READ, UNDERSTAND, AND AGREE TO ALL OF THE TERMS OF THIS AGREEMENT.

PRINT Participant's Name
(Adult or minor)

Signature of Participant

Date

PARENT/GUARDIAN WAIVER FOR MINORS (under 18 years of age)

As the parent and/or legal guardian of the minor named above, I hereby represent that I am in fact acting in such capacity and agree to the terms of this Agreement on behalf of the minor, and further agree to release, waive liability, discharge, defend, indemnify and hold harmless Activity Provider from any and all claims, demands, causes of action, liabilities and losses which may be imposed upon Activity Provider, because of any defect in or lack of such capacity to so act.

PRINT Parent or Guardian's Name
(Adult or minor)

Signature of Parent or Guardian

Date

A COPY OF THIS AGREEMENT WILL BE PROVIDED TO YOU UPON REQUEST.

SCHEDULE 1

Activity

Snorkeling; Swimming

Additional Description of Activity and Risks

This Activity may include, but is not limited to, using, handling or otherwise being near snorkeling equipment and participating in snorkeling tours or ocean swimming. In addition to those Risks described above, additional Risks may be caused by, among other things: exposure to various ocean conditions, such as swells, waves, surf, shore breaks, shallow waters, wakes, water flow, tides, currents and eddies; exposure to variant weather conditions and/or terrains; accidental drowning; overexertion; hyperextension; dehydration; hypoxia; exhaustion; defective or faulty snorkeling equipment; and/or collisions or contact with other persons, equipment, watercrafts, objects, marine animals, reefs, plants, rocks, structures, wildlife and/or ocean signage, markers or barriers; all of which are Risks which may cause harm to the Participant.

Initial

Date

Activity

Boating; Sailing; or Other Watercraft Activities

Additional Description of Activity and Risks

This Activity may include, but is not limited to, climbing in and out of, riding, sitting, standing or otherwise being a passenger in a boat, sailboat, and/or other watercraft or floating vessel.

In addition to those Risks described above, additional Risks may be caused by, among other things: wet and/or slippery surfaces, decks, ladders, stairs, steps and/or railings; uneven surfaces encountered while boarding and/or exiting watercrafts or vessels ashore or on the open ocean; pitching and rolling of watercrafts, vessels or other marine recreation equipment; frequently changing weather, wind and ocean conditions that may cause the seas to become rough and unpredictable; high winds; pitching and rolling of the vessel; and watercraft or vessel traffic that can cause collisions, wakes and/or contact with other persons, equipment, structures or objects; all of which are Risks which may cause harm to the Participant. As a rule, I understand the need to always use one hand to hold on to the vessel while on board or moving about the vessel.

Initial

Date

Activity

SNUBA® Diving

Additional Description of Activity and Risks

This Activity may include, but is not limited to, handling, operating and/or otherwise being near SNUBA® diving equipment and/or participating in SNUBA® dives.

In addition to those Risks described above, additional Risks may be caused by, among other things: oxygen toxicity; decompression sickness; embolism or other hyperbaric injuries; muscle spasms; nausea; dizziness; vision and/or hearing issues; overexertion; fatigue; defective or faulty SNUBA® diving equipment and/or air tanks; exposure to various ocean conditions; exposure to variant weather conditions and/or terrains; and/or collisions or contact with other persons, equipment, watercrafts, objects, marine animals, reefs, plants, rocks, structures, wildlife and/or ocean signage, markers or barriers; all of which are Risks which may cause harm to the Participant.

Initial

Date