
 1985
 INDEPENDENCE LAND & CAPITAL, INC.
 TO: DECLARATION OF COVENANTS

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THIS DECLARATION OF COVENANTS made and dated this 26th day of December, 1984, by INDEPENDENCE LAND AND CAPITAL, INC., a Delaware corporation, hereinafter referred to as ILC.

WITNESSETH:

WHEREAS, ILC, as of the date of recordation of this instrument, owns certain tracts or parcels of land located in the Gainesboro Magisterial District, Frederick County, Virginia, and more specifically within the Subdivision known as "Lake Holiday Estates" or "The Summit," being for the most part property acquired by ILC's predecessor in interest, IMT Properties, Inc., by Deed dated July 21, 1977, of record in the Office of the Clerk of the Circuit Court of Frederick County, Virginia, in Deed Book 476 at Page 825 and by Deed dated November 4, 1982, of record in Deed Book 554 at Page 4 (such tracts or parcels of land being hereinafter referred to as "Independence Land Property"); and

WHEREAS, ILC and Lake Holiday Country Club (hereinafter "Club") and Lake Holiday Estates Utility Company (hereinafter "Utility Company") have by a certain Release and Settlement Agreement dated June 1, 1984, between those parties (hereinafter "Agreement"), resolved certain differences between themselves; and

WHEREAS, pursuant to said Agreement, ILC has agreed to the recordation among the land records of Frederick County, Virginia, of certain covenants real to attach to and run with the Independence Land Property, said covenants to be for the benefit of, and enforceable by, the Club, the Utility Company, and all owners of tracts and parcels of land within, or hereafter conveyed out of, Independence Land Properties, and the heirs, personal representatives, successors, and assigns of each of them.

NOW THEREFORE, in consideration of the agreements, releases, and undertakings set forth in said Agreement, ILC does hereby declare, impose, establish, and create the following covenants to attach to Independence Land Property and run with the land and

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the ownership thereof and to be for the benefit of, and enforceable by, the said Club, Utility Company, and/or all owners of tracts and parcels of land within, or hereafter conveyed out of, Independence Land Properties, and the heirs, personal representatives, successors, and assigns of each of them, against other such beneficiaries, including against subsequent owners of said property, to-wit:

(1) A transferee, other than a Developer as hereinafter defined, of any portion of Independence Land Property platted for single-family residential development, shall within thirty (30) days of such transfer become a member of the Club and pay all applicable dues and assessments generally imposed on members of the Club and, in addition, shall pay, when water and sewer service is made available by the Utility Company to said lot, any and all fees or assessments generally imposed by the Utility Company on the owners of other single-family residential lots within the Subdivision known as The Summit, including availability fees, as periodically approved by the State Corporation Commission. There shall be separate assessments or dues owed to the Club, and separate availability or service charges owed to the Utility Company for each and every such lot.

(2) In the event that a Developer, as hereinafter defined, intends to plat or replat any parcel or tract of Independence Land Property for use or uses other than single-family residential lots or as single-family residential lots substantially larger than the sizes of single-family residential lots on similar topography in Sections 1 through 8A of The Summit Subdivision, then, in such event, Developer and Club shall mutually agree upon the assessments and dues that are to be payable by a transferee, other than another Developer, to the Club. Once such dues and assessments are agreed upon between Club and Developer or by arbitration, those dues and assessments shall remain in the same proportion to the dues and assessments for owners of lots in Sections 1 through 3A as of the date of

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such agreement, it being understood and agreed that the Board of Directors of the Club may, from time to time change the dues and assessments for owners of lots in Sections 1 through 3A, and thereby the dues and assessments payable by the transferees of Independence Land Property. Such agreement, once reached, shall be (i) memorialized in a writing signed by Developer and for the Club, said writing to be maintained in the records of the Club and Developer; and (ii) shall thereafter be binding upon the Club, the Developer, and all transferees of the lot, unit, or other division of any tract or parcel with respect to which the agreement related. In the event that Developer and Club are unable to reach such mutual agreement within sixty (60) days, with respect to such dues and assessments the matter shall, upon the application of either party, be submitted to arbitration as hereinafter provided. The arbitration award shall be memorialized, and shall have the same force and effect, as provided above when mutual agreement shall have been reached. Within thirty (30) days after the transfer to a transferee, other than a Developer, of any lot, unit, or other division of any tract(s) or parcel(s) with respect to which assessments and dues have been mutually agreed upon or determined by arbitration, the transferee shall become a member of the Club and shall thereafter pay to the Club such assessments and dues, computed from the date of transfer. In addition, a Developer intending to plat or replat any parcel or tract of Independence Land Property for the use or uses described above shall obtain a determination from the Utility Company as to the class or classes of services, and the rates, charges, and fees pertaining thereto, including availability and connection/"tap" fees and charges, in accordance with the Utility Company's then approved Schedule of Rates and Charges, in the event that water and/or sanitary sewer service is, becomes, or is to become available to the parcel(s) or tract(s) to be so developed. The transferee, other than another Developer, of any lot, unit, or other division of any such

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tract(s) or parcel(s), shall, in the event water and/or sanitary sewer service is made available by the Utility Company, pay the said Utility Company's charges, including service availability fees, in accordance with its Schedule of Rates and Charges approved from time to time by the Virginia State Corporation Commission. Separate Club dues and assessments and separate Utility Company service availability and connection charges shall be due for each lot, unit, or other divisions of any tract(s) or parcel(s) platted or replatted as contemplated in this paragraph.

(3) Notwithstanding anything herein to the contrary, no Developer will be required to pay to the Club any dues or assessments on any lot, tract, or parcel of Independence Land Property held or purchased by Developer; however, when a Developer, other than ILC, has held such lot, tract, or parcel for a full year from the date of its transfer to any such Developer other than ILC, thereafter such Developer will be required to pay Club annual assessments and dues aggregating One Hundred Dollars (\$100.00) per subdivided and platted lot, such assessments and dues to be increased annually by Twenty Dollars (\$20.00) per year until the assessments and dues being paid per lot equal that generally imposed upon other similarly situated members of the Club. Any Developer purchasing more than ten (10) lots platted for residential development in Independence Land Property will not be required to pay any dues or assessments to the Club until such time as such Developer owns ten (10) or fewer lots in Independence Land Property, whereupon such Developer, other than ILC, will be responsible for paying dues and assessments on each of said ten (10) or fewer lots as set forth above.

(4) In the event that any Developer and the Club cannot agree, within the said sixty (60) day period, in those circumstances specified in Paragraph (2), above, assessments and/or dues are to be mutually agreed upon, then such dispute shall, upon the demand of either party, be submitted to

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arbitration under the rules of the American Arbitration Association then prevailing, and both parties shall be bound by the arbitrator's decision, and judgment upon such decision may be entered in any Federal or state court having jurisdiction.

(5) The term "Developer" as used herein shall mean ILC (including its successor corporations) and any entity purchasing two (2) or more lots for development in the Independence Land Property in any single transaction or related series of transactions.

(6) The term "transfer" as used herein shall mean the closing upon or otherwise effectuating any conveyance by deed, installment, or other sales contract whereby the vendee or its assigns takes possession, or any other agreement by means of which a party acquires and exercises the right to immediate possession of property, and in the case of ILC, its successors or assigns, and any other Developer, as herein defined, shall, in addition, include any lease or rental contract whereby the lessee or tenant gets possession of the property.

(7) Whenever possible, each provision of this Declaration of Covenants shall be interpreted in such manner as to be valid under applicable law, but if any provision hereof shall be held by any court of competent jurisdiction to be invalid or prohibited under said applicable law, such provision shall be ineffective only to the extent of such invalidity or prohibition without invalidating any other provisions of this instrument.

(8) To the extent that the provisions hereof are in conflict with or differ from covenants, conditions, or restrictions contained in the below-cited Deeds of Declaration on Sections 5B, 5C, 9, 10, 11, and 12 of the said Subdivision, said Deeds of Declaration are hereby amended and supplemented as provided herein, this instrument having been made by the owners of real property within the said Sections 5B, 5C, 9, 10, 11, and 12, and, by their execution hereof, the Club and Utility Company,

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being third-party beneficiaries of the restrictions, covenants, and conditions being hereby amended or supplemented, the same being with the free consent and in accordance with the desires of the undersigned beneficiaries, owners, proprietors, and trustees, if any. Said Deeds of Declaration affected are recorded among the land records of Frederick County, Virginia, as follows:

Section	In Deed Book	At Page
5B	440	854
5C	440	867
9	440	243
10	434	183
11	434	231
12	440	266

(9) Subject to all of the then owners of any real property in the particular tract(s) or parcel(s) of land, with respect to which the below-reserved right is then being exercised, joining in the execution of the instrument(s) required to so do, ILC, for itself, its successors and assigns, reserves the right, with respect to any and all tracts or parcels of Independence Land Property except those conveyed to the Club or Utility Company incident to the recording of this instrument, to terminate, amend, supplement, or replace, from time to time, any or all restrictions, covenants, or conditions contained in any presently recorded, or recorded in the future, Deeds of Declaration, Declaration of Covenants, or other instruments having the same force and effect, and/or to cause to be made and duly recorded from time to time such other or additional instruments as it, its successors and assigns, may deem necessary or desirable, containing similar, different, additional, or less restrictions, covenants, and conditions than those previously declared or those applicable to other Sections in the said Summit Subdivision; PROVIDED, only, that ILC, its successors and assigns, in the exercise of the said reserved right, shall not, directly or indirectly, terminate, amend, supplement, or replace any covenant herein, nor declare, impose, establish, or create any restriction, covenant, or condition which is contrary to or in

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conflict with any of the provisions of this instrument, unless the instrument effectuating such is also joined in its execution and recording by the Club and the Utility Company, or their successors. It is understood and agreed that ILC, its successors and assigns, intends, in the future, to prepare new plats and Deeds of Dedication with respect to Independence Land Property, that such plats and deeds shall be for the benefit of those persons purchasing property within the Independence Land Property, and shall be consistent with land ^{use} ~~use~~ in the said Summit Subdivision.

IN WITNESS WHEREOF, ILC has caused its duly authorized officer or attorney-in-fact to execute and deliver this instrument on its behalf; and, to acknowledge their consent hereto and desire herefor, the Club and the Utility Company have joined herein, causing their duly authorized officers to execute and deliver this instrument, all as of the date first written above.

INDEPENDENCE LAND AND CAPITAL, INC.

By: *[Signature]*

Secretary

LAKE HOLIDAY COUNTRY CLUB, INC.

By: *[Signature]*

LAKE HOLIDAY ESTATES UTILITY COMPANY

By: *[Signature]*

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STATE OF N.Y.
COUNTY OF N.Y., to-wit:

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that William P. Miller, Secretary, of INDEPENDENCE LAND AND CAPITAL, INC., whose name is signed to the foregoing and hereunto attached Declaration of Covenants dated as of the 26th day of December, 1984, personally appeared before me in my State and County and acknowledged the same to be the act and deed of the said INDEPENDENCE LAND AND CAPITAL, INC., and made oath that his signature was affixed with due authority.

GIVEN under my hand and seal this 26th day of December, 1984.

JEAN M. EARLY
NOTARY PUBLIC, STATE OF NEW YORK
No. 74-4015073
Qualified on 7-23-81
Certificate No. 74-4015073
Commission Expires March 22, 1985

Jean M. Early
Notary Public

My Commission expires: 3/22/85

STATE OF Virginia at Large
COUNTY OF Henrichs, to-wit:

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that Carl H. ..., President, of LAKE HOLIDAY COUNTRY CLUB, INC., whose name is signed to the foregoing and hereunto attached Declaration of Covenants dated as of the 26th day of December, 1984, personally appeared before me in my State and County and acknowledged the same to be the act and deed of the said LAKE HOLIDAY COUNTRY CLUB, INC., and made oath that his signature was affixed with due authority.

GIVEN under my hand and seal this 28th day of December, 1984.

Carl H. ...
Notary Public

My Commission expires: July 29, 1987

STATE OF Virginia at Large
COUNTY OF Henrichs, to-wit:

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that Carl H. ..., President, of LAKE HOLIDAY ESTATES UTILITY COMPANY, whose name is signed to the foregoing and hereunto attached Declaration of Covenants dated as of the 26th day of December, 1984, personally appeared before me in my State and County and acknowledged the same to be the act and deed of the said LAKE HOLIDAY ESTATES UTILITY COMPANY, and made oath that his signature was affixed with due authority.

GIVEN under my hand and seal this 28th day of December, 1984.

Carl H. ...
Notary Public

My Commission expires: July 29, 1987

This instrument of writing was produced to me on the 28th day of December, 1984, and with certificate of acknowledgment thereto produced was admitted to record.

George B. Whitacre