

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of this 1st day of June, 1984, by and among LAKE HOLIDAY COUNTRY CLUB, INC., a Virginia not-for-profit corporation (the "Club"), LAKE HOLIDAY ESTATES UTILITY COMPANY, a Virginia corporation (the "Utility Company") and INDEPENDENCE LAND AND CAPITAL, INC., a Delaware corporation ("Independence Land").

W I T N E S S E T H:

WHEREAS, Independence Land is a creditor which foreclosed on its lien on property located in that subdivision known as Lake Holiday Estates (also known as The Summit) in Gainesboro District, Frederick County, Virginia, as shown on plats recorded in Clerk's Office of the Circuit Court of Frederick County (the "Development");

WHEREAS, the Country Club instituted an action against Independence Land in the Circuit Court of Frederick County, Virginia, which action was subsequently removed to the United States District Court for the Western District of Virginia, Civil Action No. 84-0015 (H), hereinbelow defined as the "Action;"

WHEREAS, on April 6, 1984, Frank Hermann, Chairman of the Board of Directors, and Holcombe T. Green, Jr., Secretary on behalf of Independence Land and Carl H. Simms, Edwin O. Earl, and Don Stoops and John Auckeman, acting on behalf of the Club and the Utility Company entered into a Settlement in Principle which contemplated a definitive agreement setting forth in detail the agreement therein contained in order to settle and resolve between and among themselves the controversies and causes of action heretofore arising and asserted in connection with the Development including, without limitation, those claims made in the Action as hereinbelow defined;

PLAINTIFF'S EXHIBIT

WHEREAS, the Club, the Utility Company and Independence Land desire to enter into this Agreement to set forth their mutual understandings and agreements with respect thereto.

NOW, THEREFORE, for and in consideration of the premises hereof, the properties to be transferred hereunder, and the mutual covenants, stipulations and agreements hereinafter set forth, the Club, the Utility Company and Independence Land do hereby covenant, stipulate and agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms shall have the meanings thereto ascribed in this Paragraph 1.

"Action" means that certain cause of action entitled Lake Holiday Country Club, Inc. v. Independence Land and Capital, Inc. originally filed in the Circuit Court of Frederick County, Virginia which Action was removed to the United States District Court for the Western District of Virginia, and bears Civil Action No. 84-0015(H).

The "Club" means Lake Holiday Country Club, Inc., a not-for profit corporation created pursuant to the laws of the Commonwealth of Virginia and maintaining its principal place of business in the County of Frederick, State of Virginia, and its successors, assigns, subsidiaries, parent or other affiliated corporations.

~~"Independence Land" means Independence Land and Capital, Inc., a corporation created pursuant to the Laws of Delaware and maintaining its principal place of business in the City of Bradenton, State of Florida, and its predecessor corporations, corporations merged with and into Independence Land, its successors, assigns, subsidiaries, parent or other affiliated corporations.~~

"Independence Land Property" means all those tracts or parcels of land, now owned by Independence Land and located in the Development except such property that is to be conveyed to the Club, as set forth in Paragraph 2 hereof, or upon which the

Club is to be granted an option, as set forth in Paragraph 15 hereof.

"Independence Land Releasees" means Independence Land, and its predecessor corporations, corporations merged with and into Independence Land, its insurers, successors, assigns, subsidiaries, parent or other affiliated corporations and all of their respective present, former or retired directors, officers, agents and employees.

The "Utility Company" means Lake Holiday Estates Utility Company, a corporation created pursuant to the laws of Virginia and maintaining its principal place of business in the County of Frederick, State of Virginia, and its successors, assigns, subsidiaries, parent or other affiliated corporations.

2. CONVEYANCE BY INDEPENDENCE LAND TO THE CLUB OF CERTAIN PROPERTY. Subject to the reservations of non-exclusive easements for the benefit of the Independence Land Property for use, access, ingress and egress as more fully set for below, Independence Land hereby agrees to convey to the Club and the Club hereby agrees to accept those certain tracts and parcels of land within the Development, hereinafter set forth, and as more particularly described on the Preliminary Master Plan of the Development (the "Plan") attached hereto and made a part hereof, together with the buildings and improvements, if any, erected thereon:

(A) That certain tract or parcel of land, consisting of approximately 12.2 acres, identified by the letter "A" on the Plan, together with the buildings and improvements located thereon, including, without limitation, a clubhouse facility, subject to the reservation of a non-exclusive easement of access, ingress and egress over such property for the benefit of Independence Land Property, provided such easement shall terminate as to any portion of said property transferred by Club to any third party unaffiliated with Club for use unrelated to the Club's activities, and provided further that such easement shall

temporarily abate for so long as any owner of said Independence Land Property who is required to be a member of Club, as hereinafter provided, is either (i) not a member in good standing of the Club, or (ii) not current in the payment of all dues and assessments of the Club.

(B) The first nine holes of the golf course, together with Lot 478 of Section 3A of the Development, providing access from the golf course to the clubhouse, all of which land is identified by the letter "B" on the Plan, subject to the reservation of a perpetual, non-exclusive easement of access, ingress and egress over such property for the benefit of Independence Land Property, provided that such easement shall temporarily abate for so long as any owner of said Independence Land Property who is required to be a member of Club, as hereinafter provided, is either (i) not a member in good standing of the Club, or (ii) not current in the payment of all dues and assessments of the Club.

(C) That certain tract or parcel of land identified by the letter "C" on the Plan, together with the buildings and improvements located thereon, including, without limitation, an administrative building, ~~subject to the reservation of a non-exclusive easement of access, ingress and egress over such property for the benefit of Independence Land Property, provided that such easement shall terminate as to any portion of said property transferred by Club to any third party unaffiliated with Club for use unrelated to the Club's activities, and provided further that such easement shall temporarily abate for so long as any owner of said Independence Land Property who is required to be a member of Club, as hereinafter provided, is either (i) not a member in good standing of the Club, or (ii) not current in the payment of all dues and assessment of the Club.~~

(D) The roads shown on the Plan, which roads constitute all the roads presently in use in the Development except those located in Sections 5B, 5C, 9, 11 and 12 of the Development, and that certain tract or parcel of land identified as "D-2" on the

Plan, together with the buildings and improvements located thereon, including, without limitation, a guardhouse, subject to the reservation of a perpetual, non-exclusive easement of access, ingress and egress over such property for the benefit of the Independence Land Property.

(E) The land identified by the letter "E" on the Plan, which areas include certain undeveloped land located within Sections 1, 2, 3A, 4A, 5A, 5B, 6A, 6B, 7 and 8A of the Development, subject to the reservation of a non-exclusive easement of access, ingress and egress over such property for the benefit of Independence Land Property, provided that such easement shall terminate as to any portion of said property transferred by Club to any third party unaffiliated with Club for use unrelated to the Club's activities, and provided further that such easement shall temporarily abate for so long as any owner of said Independence Land Property who is required to be a member of Club, as hereinafter provided, is either (i) not a member in good standing of the Club, or (ii) not current in the payment of all dues and assessments of the Club.

(F) The lake, dam, floodplain areas, and beach area commonly known as Beach 2, all of which areas are identified by the letter "F" on the Plan, subject to the reservation of a perpetual, non-exclusive easement of access, ingress and egress over such property for the benefit of the Independence Land Property, provided that such easement shall temporarily abate for so long as any owner of said Independence Land Property who is required to be a member of the Club as hereinafter provided, is either (i) not a member in good standing of the Club, or (ii) not current in the payment of all dues and assessments of the Club.

(G) Those certain lots located in Sections 1, 2, 3A, 4A, 5A, 6A, 6B, 7 and 8A of the Development, to be identified prior to closing by a separate schedule to be furnished by Independence Land to the Club, which lots are all of the lots in each said section currently titled in the name of Independence Land.

(H) That certain portion of Section 4A of the Development identified by the letter "H" on the Plan, which tract is designated on said plat for multi-family residential development, but is not zoned for such.

(I) Those certain tracts or parcels of land located in the Development identified by the letter "I" on the Plan.

(J) That certain tract or parcel of land, consisting of approximately 1 acre, identified by the letter "J" on the Plan, together with the buildings and improvements located thereon, including, without limitation a water tower, subject to the reservation of a perpetual, non-exclusive utility easement over such property for the purpose of constructing, maintaining and utilizing water conduits and pipes in such property for the benefit of Independence Land, including, without limitation, all successors and assigns, and the Independence Land Property.

Independence Land shall deliver to the Club a special warranty deed conveying the aforesaid property, subject to the reservations set forth above. The Club will accept title to such property subject to normal matters of title satisfactory to the Club, but free and clear of all real estate tax liens.

In connection with the aforesaid transfers, the Club will acknowledge the right of Independence Land, including, without limitation, all successors and assigns, to use the Clubhouse and all other facilities that are available to members of the Club, including without limitation, the lake, golf course, tennis courts and beaches, subject to the same rules and regulations as are imposed on such other members, a copy of which rules and regulations has been furnished to Independence Land (the "Rules and Regulations"); provided, however, it is expressly understood and agreed that in no event shall Independence Land be required to pay any dues, assessments or membership charges of any kind whatsoever to the Club with respect to the Independence Land Property, and any and all successors, transferees and assigns of Independence Land shall only be required to pay dues and assess-

ments as more fully set forth in Paragraph 7 hereof. The Club hereby agrees to admit automatically any and all successors, transferees and assigns of Independence Land, other than Developer as hereinafter defined, as full voting members of the Club upon application by each such successor, transferee or assigns as required by Paragraph 7 hereof, provided that this agreement is not to be construed to allow any tenants or licensees or assignees of Independence Land to use such amenities. It is further agreed that Independence Land shall not be a member of Club nor shall it have any vote on the affairs of the Club by reason of its ownership of Independence Land Property.

3. RELEASES AND WAIVERS OF THE CLUB AND THE UTILITY COMPANY. The Club and the Utility Company hereby absolutely, unconditionally and completely release, discharge and waive forever and for all purposes and in all respects Independence Land Releasees, or any of them, jointly and severally, for any and all claims, demands, actions, or causes of action (including without limitation any claims or causes of action based upon indemnity, contribution, or subrogation), suits, costs, damages, expenses, compensation, penalties, assessments, liabilities and obligations of any kind or nature whatsoever, known or unknown, direct or consequential, foreseen or unforeseen, matured or unmatured, developed or undeveloped, concealed or unconcealed, anticipated or unanticipated, fixed or contingent, incurred or arising at any time prior to the date hereof, including, but not limited to, the claims made in the Action.

4. RELEASES AND WAIVERS OF INDEPENDENCE LAND. Independence Land hereby absolutely, unconditionally and completely releases, discharges and waives forever, and for all purposes and in all respects, the Club and Utility Company, or any of them, jointly and severally, for any and all claims, demands, actions or causes of action (including, without limitation, any claims or causes of action based upon indemnity, contribution or subrogation), suits, costs, damages, expenses, compensation, penalties, assessments,

liabilities and obligations of any kind or nature whatsoever, known or unknown, direct or consequential, foreseen or unforeseen, matured or unmatured, developed or undeveloped, concealed or unconcealed, anticipated or unanticipated, fixed or contingent, incurred or arising at any time prior to the date hereof, including, but not limited to, the claims and counter-claims made in the Action.

5. RELEASE BY INDEPENDENCE LAND OF CLAIMS ARISING IN CONNECTION WITH \$250,000 LOAN PAYABLE TO WINCHESTER CREDIT CORPORATION. Independence Land hereby releases the Club and the Utility Company from any and all obligations owing to Independence Land by reason of that certain deed of trust note between Club and Winchester Credit Corporation in the original amount of \$250,000.00, dated March 28, 1978, and also by reason of that certain Indemnification Agreement dated March 28, 1978 between Club, Utility Company and Independence Mortgage Trust, a Georgia business trust ("IMT"), the predecessor of Independence Land. This release applies to all obligations under said loan and agreement, whether presently existing or hereafter arising.

6. RELEASE OF THE CLUB'S AND THE UTILITY COMPANY'S OBLIGATIONS ARISING IN CONNECTION WITH \$180,000 PROMISSORY NOTE. On December 4, 1979, IMT made a loan to the Club in the original principal amount of \$180,000, evidenced by a promissory note, dated December 4, 1979 (the "Note"), bearing interest at the rate per annum of eight and one-half percent (8.5%). The principal outstanding on the Note, together with all interest accrued thereon, is due and payable on September 1, 1987. Independence Land releases the Club from any and all obligation owing to Independence Land on the Note and agrees to return the cancelled Note to the Club.

7. OBLIGATION OF INDEPENDENCE LAND'S SUCCESSORS, TRANSFEREES AND ASSIGNS TO PAY CLUB DUES AND UTILITY COMPANY AVAILABILITY FEES. Independence Land has simultaneously with the execution of this Agreement executed a Declaration of Covenants with respect

to the Independence Land Property, which Declaration of Covenants is incorporated herein by reference and made a part hereof. It shall be the responsibility of Independence Land to execute and record such Declaration of Covenants in the Clerk's Office of the Circuit Court of Frederick County, Virginia, on the date of closing hereunder.

8. DEVELOPMENT OF RESTRICTIONS ON GOLF COURSE AND LAKE USE AND CONTROL. The Club has adopted the Rules and Regulations and hereby agrees that it will not change the Rules and Regulations in any material way without obtaining the prior written consent of Independence Land, so long as Independence Land owns any Independence Land Property, provided that such permission will not be unreasonably withheld.

9. RESTRICTIONS ON USE OF BEACH 3. Independence Land owns that certain tract or parcel of land commonly known as Beach 3 which beach is identified by the letter "M" on the Plan. Until such time as Independence Land devises a development plan with respect to Beach 3 on the Independence Land Property, Independence Land hereby agrees to provide the Club's members right of access thereto subject to all limitations imposed by Independence Land.

10. DISMISSAL WITH PREJUDICE OF THE ACTION. The Club and Independence Land covenant and agree that prior to the time of the execution of this Agreement each has authorized and directed the execution and entry of a stipulation of dismissal with prejudice in regard to the claims and counterclaims made in the Action.

11. REPRESENTATIONS AND WARRANTIES. The Club, the Utility Company, and Independence Land hereby represent and warrant each to the other that each (i) has the right pursuant to a duly authorized and executed corporate resolution to execute this Agreement and (ii) has not obligated itself to, nor has it conveyed, pledged, transferred, hypothecated, or in any manner encumbered or assigned any of the claims, demands, actions,

causes of action, liabilities and obligations which are released or waived pursuant hereto or which are the subject of the covenants herein; provided, however, that the parties acknowledge that this Agreement is contingent upon approval by the membership of the Club. <

12. WATER AND SEWER SERVICE FOR INDEPENDENCE LAND PROPERTY.

The Utility Company agrees that Independence Land, its successors and assigns, will be allowed to connect all or any portion of the Independence Land Property to the water and sewer service provided by the Utility Company, provided that the cost of any extension (including any and all special pumps) necessary for such connection is paid by Independence Land or such successor or assigns in advance of the construction of such extension. Independence Land or such successor or assigns will be given a credit by the Utility Company for the cost of such construction, plus reasonable interest thereon. The credit provided for herein shall apply against any and all tap in fees for Independence Land Property served by such extension over a period of 20 years after the date of completion of such extension.

13. REPLATTING OF THE INDEPENDENCE LAND PROPERTY. The Club and Utility Company hereby waive and release any and all rights which either of them may possess, either directly or indirectly, with respect to Section 9, 11, 12 of the Development arising out of or relating to those certain Deeds of Dedication recorded with respect to such Sections in the Clerk's Office of the Circuit Court of Frederick County, Virginia, or otherwise set forth in similar Deeds of Dedication relating to the Development with respect to the Independence Land Property. It is understood and agreed that Independence Land intends, in the future, to prepare new plats and Deeds of Dedication with respect to the Independence Land Property and 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 in the Development. In addition, the Utility Company specifi-

cally waives and releases any and all rights under any such Deeds of Dedication to the Independence Land Property in connection with or relating to sewer and water services to such property, it being understood and agreed that the provisions of Paragraph 7 and Paragraph 12 of this Agreement contain the entire agreement between parties with respect to water and sewer services for the Independence Land Property.

14. THE CLUB'S COOPERATION REGARDING DEVELOPMENT OF INDEPENDENCE LAND'S PROPERTY. The Club hereby agrees to cooperate with Independence Land in any reasonable manner in Independence Land's efforts to put the Independence Land Property to its highest and best use and to realize the full potential value therefor, provided that (i) such use is consistent with the land use in the Development, and (ii) Independence Land shall reimburse Club for all reasonable expenses incurred by Club.

15. THE CLUB'S OPTION REGARDING GOLF COURSE. Independence Land agrees to grant the Club an option to acquire, within three years, ~~from the date hereof,~~ without charge, that certain tract or parcel of land identified as golf course holes 10-18 on the Plan and marked by cross lines, which property consists of the land intended to be used as the second nine holes of the golf course in the Development. Such option shall contain, among other requirements, that the Club shall submit to Independence Land, ~~within one year, from the date hereof,~~ a definitive plan for the development of such portion of the golf course as a golf course for use by members of the Club. Such plan shall detail the method of payment of the expenses to be incurred in connection with the development of such portion of the golf course and provide that all work in connection therewith will be completed within four years, ~~from the date hereof.~~ The option to be granted shall otherwise be in form satisfactory to the Club.

16. ROAD ASSESSMENTS PAYABLE BY LOT OWNERS. The Club hereby agrees (i) to maintain all roads now existing or hereafter located in Sections 9, 11 and 12 of the Development, all of which

property is Independence Land Property, and (ii) to accept any transfer of such roads from Independence Land at any time and from time to time as Independence Land may so desire, provided that no such duty to maintain or accept the transfer of such roads shall exist until such time as the construction of said roads is comparable to roads generally within those comparable portions of the Development in which residences are in use and provided further that the cost of such maintenance is available to Club through assessments paid by property owners within the Section in which the roads are located. In the event that said sections are replatted to provide for lots larger than currently platted or for uses other than single family residential use, then the assessments or dues owed by said lot owners will be mutually agreed upon with the Club, and in the event of disagreement, submitted to arbitration as hereinafter provided.

17. ARBITRATION. Any dispute arising out of this agreement concerning the amount of dues, fees or assessments to be charged shall be submitted to the American Arbitration Association under its rules then in force. 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.

18. ADDITIONAL DOCUMENTATION. The parties hereto agree to execute and deliver to each other, or to cause to be executed and delivered to each other, any documents and instruments that are reasonably requested in order to memorialize the provisions of this agreement, including, without limitation, the transfers, covenants and releases herein contained.

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C.H.S. 31,
30, 1984 or such other time and place as the parties agree. At closing, all deeds and other documents necessary to carry out the terms hereof shall be delivered.

19. CLOSING DATE. Closing shall be on or before ~~November~~ ^{December}

20. SPECIFIC PERFORMANCE. The parties hereto agree that the covenants and agreements contained herein are unique in nature and that in the event of a default hereunder, the party

not in default shall be entitled to specific performance and to recover any and all reasonable costs, including attorney's fees, incurred in obtaining such specific performance.

21. MISCELLANEOUS This agreement shall survive the closing and delivery of deeds and other documents. This agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

This agreement shall be binding upon and inure to the benefit of Independence Land, the Club and the Utility Company and their respective successors and assigns.

LAKE HOLIDAY COUNTRY CLUB, INC.

By: Carl N. [Signature]
Title: president

LAKE HOLIDAY ESTATES UTILITY COMPANY

By: Carl N. [Signature]
Title: president

INDEPENDENCE LAND AND CAPITAL, INC.

By: [Signature]
Title: Secretary

STATE OF Virginia at Large
COUNTY OF Henric
City

I, Lawrence, a notary public in and for the State and County aforesaid, do certify that Carl W. [unclear] and [unclear] whose names, as President and [unclear] of LAKE HOLIDAY COUNTRY CLUB, INC., are signed to the writing above, bearing date on the 1st day of June, 1984, have acknowledged the same before me in my County aforesaid.

Given under my hand and official seal this 15th day of December, 1984.

My term of office expires on the 27th day of July, 1984.

Lawrence
Notary Public

STATE OF Virginia at Large
COUNTY OF Henric
City

I, Lawrence, a notary public in and for the State and County aforesaid, do certify that Carl W. [unclear] and [unclear] whose names, as President and [unclear] of LAKE HOLIDAY ESTATES UTILITY COMPANY, are signed to the writing above, bearing date on the 1st day of June, 1984, have acknowledged the same before me in my County aforesaid.

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

My term of office expires on the 29th day of July, 1984.

Lawrence
Notary Public

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

I, Jean M. Early, a Notary Public in and for the State and County aforesaid, do certify that Halcombe T. Green, Jr., whose name, as Secretary of INDEPENDENCE LAND AND CAPITAL, INC., is signed to the writing above, bearing date on the 1st day of June, 1984, has acknowledged the same before me in my County aforesaid.

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

My term of office expires on the 30th day of March, 1985.

Jean M. Early
Notary Public

NOTARY PUBLIC, STATE OF N.Y.
No. 01-461853
Qualified in New York County
Commission Expires March 30, 1985

JEAN M. EARLY NEW YORK
NOTARY PUBLIC
No. 01-461853
Qualified in N.Y.
Commission Expires March 30, 1985