

## SETTLEMENT AND RELEASE

This Settlement and Release Agreement ("Agreement") is made as of JANUARY 23, 1995, between Earl H. Scudder, Jr., and Patricia H. Scudder, their heirs, successors and assigns (the "Scudders"), Corporate Golf Marketing, Inc. d/b/a Himark Golf Course, and Dru and Guy Lammle, their heirs, successors and assigns (the "Released Parties").

Background: The Scudders are owners of approximately 24 acres of real property located at 9301 Pioneer Boulevard, more particularly described on attached Exhibit "A". Released Parties are owners and operators of a golf course located on land contiguous to, and forming the west and south boundaries of, the Scudders' land, more particularly described on attached Exhibit "B". The Released Parties have erected 27 floodlights, mounted on 9 towers (the "Lights"), for the purpose of illuminating the driving range for night practice. The Scudders have alleged that the Lights create a trespass resulting from the illumination of their property and that the amount of illumination exceeds city ordinances. The Released Parties have denied such trespass and violation. The Lincoln City Council has placed the issue on its pending agenda in anticipation of a negotiated settlement. The parties hereto have reached an amicable resolution and desire to reduce such resolution to writing.

In consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Obligations of Both Parties:

- a. The parties agree to jointly request that the show cause action pending before the Lincoln City Council be dismissed.
- b. The Released Parties represent that they have already installed external shields and internal louvers to reduce glare on the Lights on the eastern-most four towers. The parties agree that, if requested by the Scudders or others who may in the future own all or part of the property described on attached Exhibit "A", the Released Parties will place the shields and louvers on the remaining Lights, with the cost of installation to be shared equally by the Released Parties and the requesting person.

2. Obligations of the Released Parties: The Released Parties, on behalf of themselves and their heirs, successors and assigns, agree as follows:

X

*Dru*

- a. As soon as weather conditions and planting season permits, but in no event later than April 1, 1995, the Released Parties will plant additional evergreen trees, of the same size and with the same spacing and configuration as the existing row of evergreen trees extending southward from Pioneer Boulevard between the two properties. The trees will extend to the south end of the property line, and the Released Parties will care for, maintain, and if necessary, replace the trees to provide a permanent barrier to golf balls and to minimize light intrusion.
- b. The Released Parties represent that they have already installed low-glare light bulbs in the Lights on the easternmost four towers. The Released Parties agree to maintain low-glare bulbs in those Lights and to place low-glare bulbs in the remaining Lights as the present bulbs burn out, and thereafter maintain low-glare bulbs in all Lights. The Released Parties agree not to place additional lighting devices on the Himark property of a kind and character that would interfere with the use and enjoyment of the Scudders' property.

3. Mutual Release: The parties, on behalf of themselves and all persons claiming through them, hereby release, remise, acquit, discharge, and forever waive all claims against each other arising from or relating to the Lights, the trespass of light emanating from the Lights, the show cause hearing, and related matters (the "Subject Issues"), other than the obligations arising hereunder.

4. Obligations of the Scudders:

- a. The Scudders represent that they are executing this Agreement with the approval of and on behalf of themselves and their children.
- b. The Scudders agree not to pursue further actions relating to the Subject Issues against the Released Parties directly, or through complaint to any governmental agency, court, or other authority, other than as a result of breach of this Agreement.

5. Agreement Running with the Land: The parties agree that the subject matter of the dispute and this Agreement touch and concern the land of both parties, and that the obligations and mutual release contained herein shall run with the land and be binding upon the parties and their respective successors in interest. However, in the event Released Parties subdivide a portion of their property for residential use, any residential lot created by such subdivision shall, upon approval of a final plat by the city of Lincoln, Nebraska, be released from any and all obligations imposed upon the Released Parties by this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

[Signature]  
Earl H. Scudder, Jr.

[Signature]  
Dru Lammle

[Signature]  
Patricia H. Scudder

[Signature]  
Guy Lammle

Corporate Golf Marketing, Inc. d/b/a Himark Golf Course

By: [Signature]  
Dru Lammle, President

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 1995, by Earl H. Scudder, Jr.

GENERAL NOTARY-State of Nebraska  
JANA M. PENTZ-McBRIDE  
My Comm. Exp. June 8, 1998

[Signature]  
Notary Public

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of JANUARY, 1995, by Patricia H. Scudder.

GENERAL NOTARY-State of Nebraska  
EARL H. SCUDDER, JR.  
My Comm. Exp. Feb. 28, 1997

[Signature]  
Notary Public

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

\_\_\_\_\_  
Earl H. Scudder, Jr.

Dru Lammle  
\_\_\_\_\_  
Dru Lammle

\_\_\_\_\_  
Patricia H. Scudder

Guy M Lammle  
\_\_\_\_\_  
Guy Lammle

Corporate Golf Marketing, Inc. d/b/a Himark  
Golf Course

By: Dru Lammle  
\_\_\_\_\_  
Dru Lammle, President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1995, by Earl H. Scudder, Jr.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1995, by Patricia H. Scudder.

\_\_\_\_\_  
Notary Public

COLORADO  
STATE OF NEBRASKA )  
EL PASO ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 1995, by Dru Lammle, individually.

Vicki L Bishop  
Notary Public

STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 1995, by Guy Lammle.

Vicki L Bishop  
Notary Public

COLORADO  
STATE OF NEBRASKA )  
EL PASO ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 1995, by Dru Lammle, President, Corporate Golf Marketing, Inc. d/b/a Himark Golf Course.

Vicki L Bishop  
Notary Public

(C:\WP\MHV1-9-5A.D)

My Commission Expires  
9-19-98

EXHIBIT "A"

A tract of land containing a portion of Lot 24, Irregular Tracts, and Lot 25, Irregular Tracts, located in the Northeast Quarter (NE 1/4) of Section 11, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, and more particularly described as follows:

Commencing at the northwest corner of said NE 1/4, thence easterly along the north line of said NE 1/4 on an assumed bearing of south 89°59'58" east a distance of 365.90'; thence south 0°00'02" west a distance of 59.02' to a point on the most westerly line of said Lot 25 I.T., said point also being on the south right-of-way line of Pioneer Blvd., said point being the true point of beginning; thence north 88°12'49" east along said right-of-way line a distance of 290.92' to a point 50.00' south of the north line of said NE 1/4; thence south 89°59'58" east along a line 50.00' south of and parallel to the north line of said NE 1/4 a distance of 193.17'; thence north 0°00'00" east a distance of 10.00' to a point 40.00' south of the north line of said NE 1/4; thence south 89°59'58" east along a line 40.00' south of and parallel to the north line of said NE 1/4 a distance of 38.65' to the northeast corner of said Lot 24 I.T.; thence south 0°13'59" east along the east line of said Lot 24 I.T. a distance of 601.50' to the southwest corner of Lot 23 I.T., located in said NE 1/4; thence south 89°59'15" east along the south line of said Lot 23 I.T. a distance of 217.22' to the southeast corner of said Lot 23 I.T.; thence south 0°10'13" east along the west line of said Lot 16 I.T. located in said NE 1/4 a distance of 402.62' to the southwest corner of said Lot 16 I.T.; thence south 89°57'51" east along the south line of said Lot 16 I.T. a distance of 217.31' to the southeast corner of said Lot 16 I.T.; thence south 0°11'13" east along the east line of said Lot 25 I.T. a distance of 558.83' to the southeast corner of said Lot 25 I.T.; thence north 89°58'37" west along the south line of said Lot 25 I.T. a distance of 739.73' to the southwest corner of said Lot 25 I.T.; thence north 0°07'06" west along the west line of said Lot 25 I.T. a distance of 558.55'; thence north 89°50'35" west a distance of 217.57' to a point on the west line of said Lot 25 I.T.; thence north 0°14'27" west along the west line of said Lot 25 I.T. a distance of 984.63' to the point of beginning. Said tract contains 23.40 acres more or less.

EXHIBIT "B"

Lots 49 and 50 of Irregular Tracts and the East Half of the Northwest Quarter of Section 11, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, and;

A part of the South Half of Section 11, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, described as follows: Commencing at the south quarter corner of said Section 11; thence northerly along the east line of the Southwest Quarter of said Section 11, a distance of 50.00 feet to the north right-of-way line of Old Cheney Road, said point to be the point of beginning; thence westerly deflecting 89 degrees 56 minutes 30 seconds left along said right-of-way line, a distance of 76.38 feet; thence westerly deflecting 2 degrees 26 minutes 01 seconds left along said right-of-way line, a distance of 150.14 feet; thence northerly deflecting 92 degrees 21 minutes right, a distance of 1273.89 feet to the south line of the North Half of said Southwest Quarter; thence easterly deflecting 90 degrees 06 minutes 30 seconds right along said south line, a distance of 226.32 feet to the southeast corner of the North Half of said Southwest Quarter; thence northerly along the east line of said Southwest Quarter, a distance of 30.77 feet; thence easterly deflecting 90 degrees 21 minutes 30 seconds right, a distance of 448.37 feet; thence southerly deflecting 89 degrees 40 minutes right, a distance of 1298.0 feet to the north right-of-way line of Old Cheney Road; thence westerly along said right-of-way line, a distance of 450.3 feet to the point of beginning; and

A part of the Northwest Quarter of the Southeast Quarter of Section 11, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, described as follows: Beginning at the northwest corner of said Northwest Quarter; thence southerly along the west line of said Northwest Quarter, a distance of 1286.46 feet; thence easterly deflecting 89 degrees 38 minutes 30 seconds left, a distance of 1323.37 feet to the east line of said Northwest Quarter; thence northerly along said east line, a distance of 1290.5 feet to the northeast corner of said Northwest Quarter; thence westerly along the north line of said Northwest Quarter, a distance of 1324.1 feet to the point of beginning.

BLOCK

CODE

CHECKED

ENTERED

EDITED

X

LANCASTER COUNTY, NEB  
Dan Nalte  
REGISTER OF DEEDS

FEB 2 4 24 PM '95  
-2901  
INST. NO 95

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OK

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