

## **APPENDIX A**

### **AGREEMENT AND RELEASE**

Dated April 14, 2003

Between the Town of Huntington, IHCC, Inc.; and the Fort Salonga Property  
Owner's Association, Inc.



## AGREEMENT AND RELEASE

This Agreement sets forth the mutual understanding between the TOWN OF HUNTINGTON at 100 Main Street, Huntington, New York, (hereinafter referred collectively to as the "Town"); and IHCC, INC., 21 Breeze Hill Road, Northport, New York (hereinafter referred to as "IHCC").

WHEREAS, the Town had filed a complaint with the New York State Supreme Court, County of Suffolk, New York as a party plaintiff entitled Town of Huntington against Indian Hills Country Club, Inc. (03 CV 05018);

WHEREAS, the Town and IHCC mutually desire to avoid the burdens and expense of any litigation/proceedings and to settle and resolve all disputes and differences between them on the terms and conditions hereinafter set forth;

NOW, THEREFORE, IHCC and the Town agree as follows:

1. No Civil Action or Proceeding.

Town agrees to discontinue its action against IHCC.

2. Payment to the Town - Fines.

- a) In resolution of this matter IHCC shall pay a total of \$30,000.00. This sum of \$30,000.00 is paid in consideration of the full resolution of all the fines for removal of the trees and for any prior work performed without benefit of Town approval in Town of Huntington against IHCC, Inc. (03-05018) to the Town. The Town will use all of the fine money to fund a study on erosion of the Town's Long Island Sound beaches.

3. Revegetation.

- a) IHCC will revegetate and plant the area in or around holes 12 and 13 of IHCC's golf course.
- b) The replanting and revegetation shall be done in consultation with the Town's Engineering Department and the Town's on-staff tree expert.
- c) The following properties may have been affected by increased wind and exposure due to IHCC's removal of trees:

Christine Zacher, 2 Thornton Drive, Northport, New York 11768  
(SCTM #400-014-04-003)

Gary & Ogilvie Gomes, 10 Thornton Drive, Northport, New York 11768  
(SCTM #400-014-04-004)

Loretta Smithlin, 30 Cousins Street, Northport, New York 11768  
(SCTM #400-014-06-3.001)

Robert & Diane Smith, 15 Cousin Street, Northport, New York 11768  
(SCTM #400-014-05-001)

- d) IHCC will plant trees on IHCC property adjacent to the below listed properties of a size and dimension to reduce wind and afford protection to:

Christine Zacher, 2 Thornton Drive, Northport, New York 11768  
(SCTM #400-014-04-003)

Gary & Ogilvie Gomes, 10 Thornton Drive, Northport, New York 11768  
(SCTM #400-014-04-004)

Loretta Smithlin, 30 Cousins Street, Northport, New York 11768  
(SCTM #400-014-06-3.001)

Robert & Diane Smith, 15 Cousin Street, Northport, New York 11768  
(SCTM #400-014-05-001)

- e) Such plantings/revegetation shall be in consultation with the Town's Engineering Department and the owners of the properties. Trees may be transplanted from other

areas within IHCC property.

4. Vachris Engineering's Letter of 3/21/03 Report:

Town has received a letter report from Vachris Engineering dated 3/21/03 regarding the stone revetment. Annexed as Exhibit A is a copy of the report.

IHCC acknowledges the Town entered this agreement in part based upon the Vachris Report. Vachris Engineering is the professional engineer required to be retained and approved by the Town to monitor progress of the work per condition #3 in Special Use Permit issued by the Town pursuant to Town Board resolution enacted 12/4/01.

5. Clubhouse/Restaurant.

a) IHCC shall enter covenants and restrictions that shall be filed with the Suffolk County Clerk's Office that will set forth the following:

- i) No new or additional clubhouse, dining facility, catering facility or restaurant shall be built, constructed or placed on tax lots 400-14-4-1 and/or 400-14-4-2 north of Breeze Hill Road in the Town of Huntington, State of New York by IHCC or its successor, assignee or transferee.
- ii) IHCC or its successor, assignee or transferee shall not move or relocate its clubhouse, dining facility or catering facility or restaurant to tax lots 400-14-4-1 and/or 400-14-4-2 north of Breeze Hill Road in the Town of Huntington, State of New York.
- iii) IHCC will be restricted to any renovation, rebuilding or construction of a clubhouse to tax lots 400-15-1-11 and/or 400-15-1-12.

iv) The Town and IHCC agree, and IHCC consents and acknowledges that it may expand, renovate or raze and reconstruct a new clubhouse only in substantially the same site and location of the present clubhouse. To the extent practical, if new clubhouse to be located adjacent to existing and toward Breeze Hill Road, Town will coordinate to permit existing structure as is to remain in use pending completion of new structure, with existing to be razed prior to issuance of CO and prior to occupancy of new clubhouse and prior to any use there of. Such expansion, renovation or rebuilding shall be restricted as follows:

- a) The exterior of any such structure shall be built in accord with architectural and streetscape existing in the area ("traditional" style and compatible with a colonial look).
- b) Any expansion, renovation, new building or rebuilding shall be limited to an increase of 30% of the building's footprint as it exists on March 24, 2003.
- c) Any expansion, renovation or rebuilding or new building shall not have a height higher than the present building height at its peak, excluding antennae or weather vanes or similar apparatus.
- d) IHCC will obtain all necessary permits from the Town prior to any such expansion, razing, reconstruction or renovation of

the clubhouse. Prior to any such expansion, renovation, reconstruction or razing, IHCC will apply for any variances or special use it may need.

- b. The Town will not seek historic designation for the clubhouse and any such pending application will be discontinued. The Town has no objection to any expansion, renovation or rebuilding or new building provided the same complies with the conditions of (iv)(a)(b)(c) and (d) above and IHCC is not in violation of the agreement.
- c. Covenants and restrictions shall run with the land and shall be filed with the Suffolk County Clerk within ninety (90) days.
- 6. Study Cooperation. IHCC will cooperate with the Town regarding any study of erosion of the Long Island Sound beaches that the Town engages.
- 7. Present Work.
  - a) IHCC shall be able to perform the following work immediately:
    - i. Repair erosion damage to slopes (from top of revetment wall to 12<sup>th</sup> fairway. The rivulets and gullies in the slopes landward of the revetment should be filled in and re-graded.
    - ii. Finish grading per plans, submitted and lay erosion blanket. This slope shall be seeded as required under existing DEC permit and covered with the erosion control blanket that is on site within a 48 hour period after completion of grading or prior to a significant storm event.

- iii. Finish fairway grading and greens and bunkers per plans submitted by Steven J. Hyman dated 2/13/03. The fairways and the remainder of the disturbed portion of the site should be re-graded as per the *Construction Plan* of Steven J. Hyman dated 2/13/03. All re-graded areas are to be covered with sod within 72 hours after completing of grading or prior to a significant storm event (any event with .25 inches of rain or better) or shall be covered with erosion control blankets or straw hay.
- iv. Install hay bales where needed, spread hay and straw as needed. Pending completion of the work, the site shall be monitored during storm events and staked hay bales shall be installed at any erosion points or developing gully sites.
- v. This shall further reflect that no fill shall be brought onto the site for purpose of doing the work and that no drainage nor irrigation shall be installed until such time as written approval/permits shall otherwise be obtained from the Department of Engineering of the Town. "Fill" shall not mean bunker sand, which may be brought in presently for the bunkers and underlayment for surface of greens.  
  
No drainage nor irrigation shall be installed until such time as written approval/permits shall otherwise be obtained from Department of Engineering of the Town. The drainage and irrigation plan shall be submitted to Peter Wolpensinger in the Engineering Department.

After approval in writing of the drainage and irrigation plan by Mr. Wolpensinger, Department of Engineering, IHCC will inform Mr. Wolpensinger in writing as to the commencement of such work such that TOH personnel can be scheduled to monitor the work.

The intent of the above measures is to stabilize the disturbed portions of the golf course and to prevent further erosion and loss of the soil surface.

8. Future Work

1. IHCC shall apply and obtain permits and licenses prior to performing any future work, which requires the same.
2. IHCC shall perform all future work in accord with Town permits and licenses required.

9. Beach Access/Revetment Stones

- a) At point where stones running from end of IHCC revetment at its easternmost point "connect" to concrete "cesspool" ring jetty, per sketch attached, as taken from Albert Tay survey dated 12/7/02 – 12/27/02, IHCC shall provide wooden steps (subject to DEC permission) to cross stones connecting revetment to concrete "cesspool" ring jetty per above, or, alternatively, stone or rock walk through/over same in lieu of wooden steps. Purpose to provide east/west access over or through the stones running north/south from the most easterly end of IHCC revetment to concrete "cesspool" ring jetty. In clarification, this access is not access to come up upon the top or splash pad area of the revetment wall or other golf course property but is expressly



limited as aforesaid. IHCC shall post signs reflecting that the access is in an active golf course area and that the user assumes the risk of crossing, including, without limitation, being hit by golf balls, and that user holds IHCC harmless. IHCC shall be responsible to replace the wooden steps or the stone or rock wall through/over the above area on a continuing basis in order to provide the aforesaid access.

- b) The Town has no obligation or responsibility as to the design, construction, maintenance or repair of the above east/west access or for posting and/or positioning of any necessary or agreed upon signs.

#### 10. New Tees on Holes 12 and 13:

- a) New tees on 12 and 13 are to be per TOH code. The tees as built, may remain but only may be used if in compliance with TOH code or if variance is granted. If a new tee is not located per TOH code, IHCC may relocate it to complying location rather than seeking a variance upon plan satisfactory to Peter Wolpensinger, Dept. of Engineering for relocated tee.
- b) IHCC to comply with all terms and conditions of all previous permits related work done on 12<sup>th</sup> and 13<sup>th</sup> holes and revetment including timely revegetation and securing of staging area.

#### 11. No Waiver

The waiver by the Town of a breach and/or default of any term, condition, covenant and/or obligation contained herein shall not be deemed to be a waiver of a subsequent breach and/or default of the same or other term, condition, covenant and/or obligation

contained herein. No term, condition, covenant and/or obligation of this Contract shall be deemed waived by the Town unless said waiver is transmitted in writing by the Town to the Parties.

12. Law Governing

a. This Agreement shall be construed, and the validity, performance and enforcement thereof shall be governed by, this law of the State of New York, except where federal law governs. Any action brought by IHCC or the Town enforce the provisions of this Agreement shall be brought only in the Supreme Court of the State of New York, County of Suffolk or the United States District Court for the Eastern District of New York. IHCC hereby consents to the exercise of personal jurisdiction over it by either or both such courts.

b. Should any provision of this Agreement require interpretation or construction, IHCC and the Town agree that the presumption that a document or agreement is to be interpreted or construed more strictly against the party who or which prepared such document or agreement shall not apply, it being agreed that both IHCC and the Town (or by their respective attorneys) have participated and/or had the opportunity to participate in the preparation of all the provisions of this Agreement.

c. In the event of legal action or a claim brought by the Town to enforce this Agreement, collect any amount due under this agreement or because a breach in performance of any term, condition, covenant and/or obligation of this agreement on the part of IHCC to be kept or performed, and a breach/default is established, IHCC shall pay the Town all expenses incurred, including reasonable attorney fees.

13. Severability.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force or effect, and the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the legality and enforceability of, any other provision of this Agreement.

14. Oral Modifications Prohibited.

This Agreement may not be changed orally.

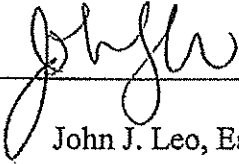
15. Full Agreement

This Agreement represents the complete understanding between the parties and no other promises or agreements shall be binding unless signed by the parties.

Town of Huntington

By: 

Date: 4/14/03



Dated: 4/8/03

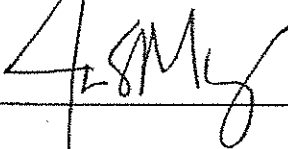
John J. Leo, Esq. (JL6886)  
Attorney for the Town

IHCC, Inc.

By: 

Dated: 4/10/03

Annie Pan  
Vice President



Dated: 4/8/03

James Margolin, Esq.  
Attorney for IHCC, Inc.

Consented to:

Fort Salonga Property Owners Association, Inc.

By:  Treasurer

Dated: 4/8/03

March 21, 2003

EXHIBIT A

Indian Hills Country Club  
21 Breeze Hill Road  
Northport, NY 11768

Attn: Joseph Caputo

Re: Stone Revetment

Gentlemen:

At the meeting on March 18, there appeared to be a question as to whether or not the revetment was constructed in the correct location.

According to the NYSDEC Permit, the top of the revetment was to be at El. 14.0 ± (NGVD) and the bottom of the toe stone of the revetment, per Special Conditions #8, "3' below Mean Sea Level", was to be at El. (-)3.0 ±. The face of the revetment was to have a slope 1V:1.75H, and the revetment was to be "...located generally along 8' contour".

When we first arrived on the site to inspect the construction of the revetment in early January of 2002, the alignment of the revetment had been staked out with flags indicating the "base line" along which the revetment was to be constructed. This placed the alignment of the top of the revetment (El. 14.0 ±) approximately 10'-6" landward of the base line, and the alignment of the toe of the revetment approximately 14'-0" seaward of the baseline. This is the way the revetment was constructed.

It should be noted that the beach level is dynamic rather than static, and will scour and accrete seasonally and may erode significantly during storms and other weather events. Although the revetment was constructed to generally follow along the "8' contour", there is no guarantee that the beach will always intersect the face of the revetment at El. 8.0.

Indian Hill Country Club  
Stone Revetment  
March 21, 2003

It is our position that the revetment was constructed properly and is located along the specified alignment, and we have attached two (2) sketches illustrating the configuration of the revetment.

We understand that this letter will be presented to the Town of Huntington. If required, we remain available to discuss this matter in greater detail with Peter Wolpensinger, P.E. and the Town's Department of Engineering.

Very truly yours,

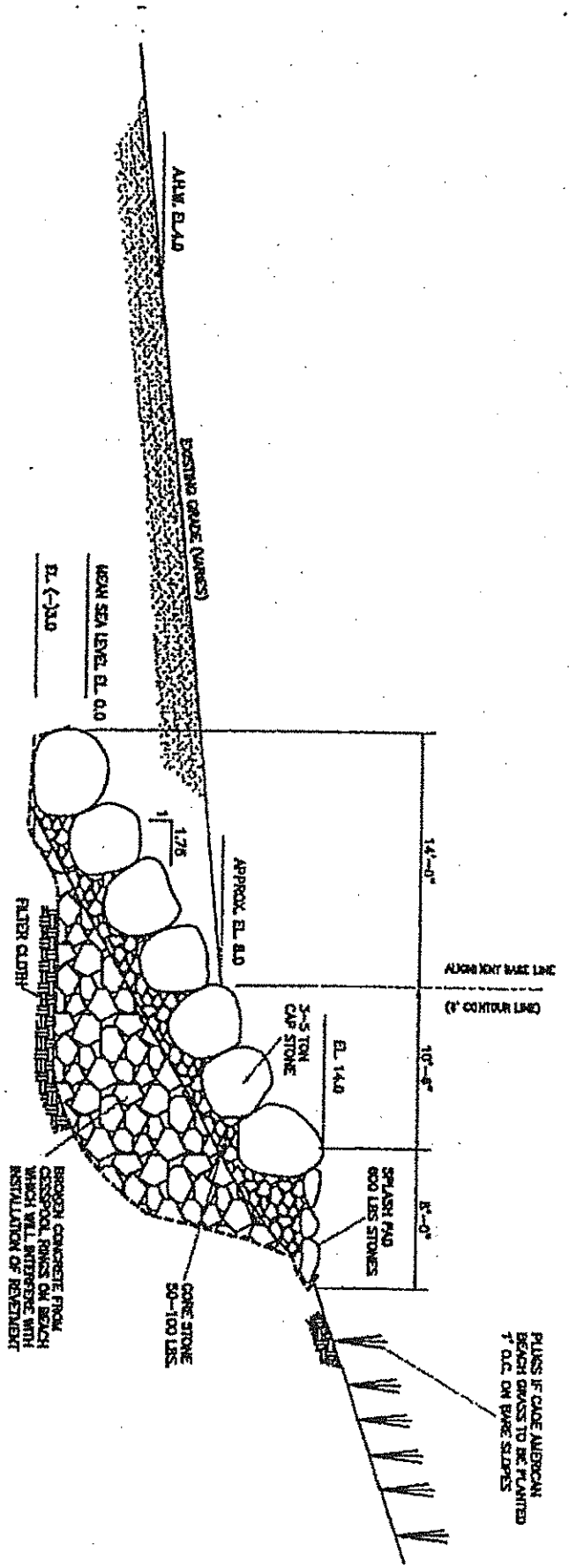
VACHRIS ENGINEERING, P.C.



Charles F. Vachris, P.E.

Enc.

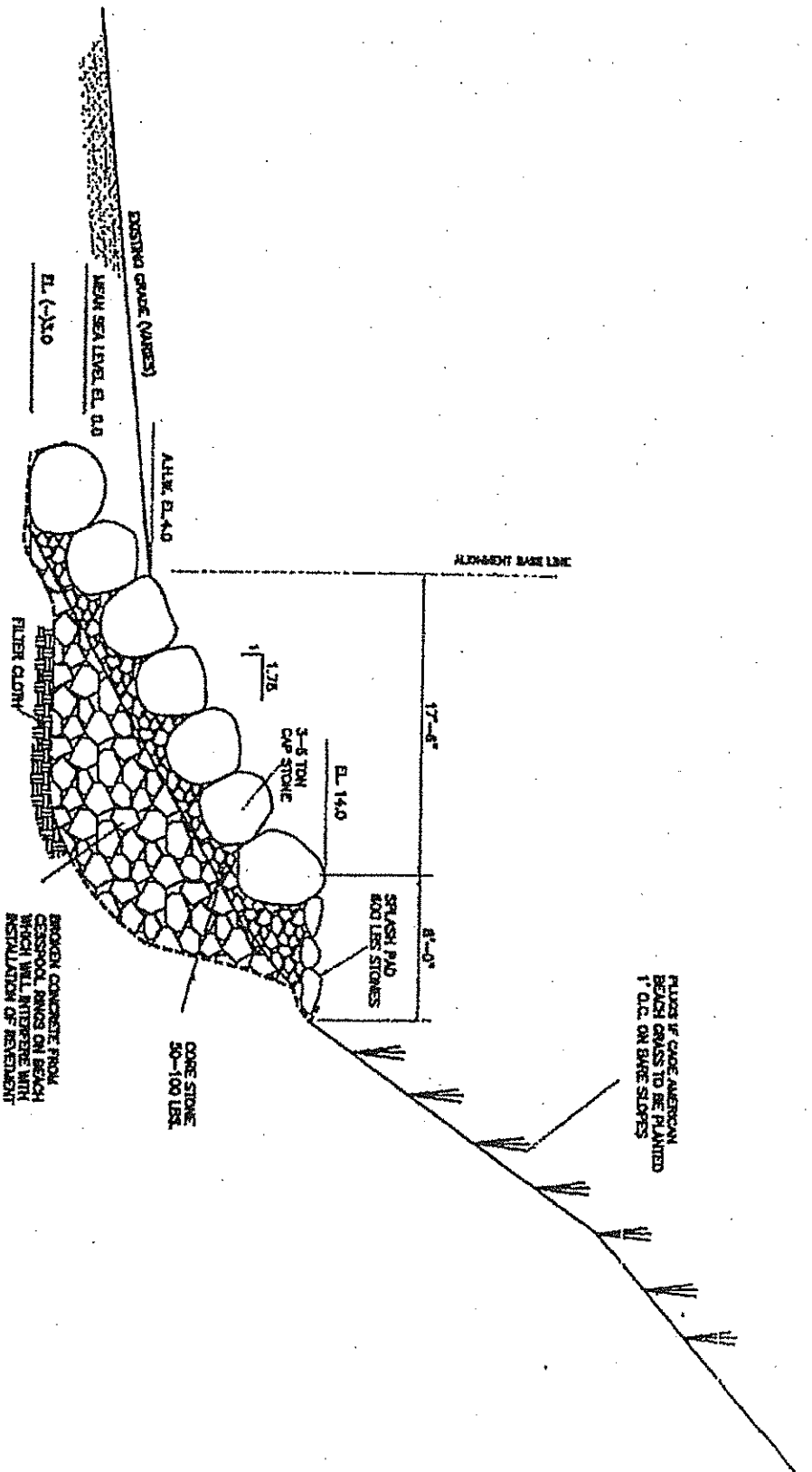
cc: James Margolin, Esq.



PLUS IF CASE AMERICAN BEACH GRASS TO BE PLANTED 1' O.C. ON BARE STEPS

### TYPICAL SECTION

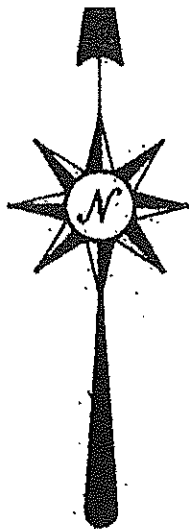
THIS SECTION DOES NOT APPLY TO THE AREA TO THE NORTH OF THE 12TH TEE WHERE A PORTION OF THE REVELMENT WILL HAVE TO BE CONSTRUCTED BELOW THE LINE OF HIGH WATER (BUT NOT BELOW LOW WATER) DUE TO THE CONFIGURATION OF THE SHORELINE AND THE SEVERITY OF THE EROSION TO THE BLUFF



**TYPICAL SECTION AT THE AREA TO THE NORTH OF THE 12TH TEE**

THIS SECTION IS SHOWN WITH THE REVETMENT AT THE LINE OF HIGH WATER. NOTE THAT IN SOME CASES, THE REVETMENT WILL HAVE TO BE CONSTRUCTED BELOW THE LINE OF HIGH WATER (BUT NOT BELOW LOW WATER) DUE TO THE CONFIGURATION OF THE SHORELINE AND THE SEVERITY OF THE EROSION TO THE BLUFF





"9"  
SKETCH PER PAR "10" (p 1 of 2)

APPROXIMATE  
AREA OF ACCESS,  
PER  
PAR.  
"10"

