

## **Tab 8**

### **Assumption of Risk Agreement for Tree Cutting on Common Area**

#### **Issue:**

There have been several requests from members to go onto common area, especially when it is next to their lot, and cut up fallen trees and remove deadfall.

#### **Background:**

The Board President and Architectural Committee have requested an assumption of risk/hold harmless agreement for LHCC which members shall sign if they wish to participate in tree cutting/clearing on LHCC property.

A typical liability waiver is a contract between a provider and a participant. In it the participant agrees to waive liability against the provider for any fault or liability for injuries resulting from ordinary negligence of the provider (mistakes, errors or faults). In Virginia, public policy forbids the enforcement of a release or waiver for personal injury caused by future acts of negligence so there cannot be a complete waiver agreement.

There can be an Assumption of Risk agreement which explains the inherent (known) risks of an activity which cannot be mitigated by the business's care. The agreement is intended to disclose these risks and prevent a business from being sued for events that were not caused by the business's negligence. The participant must fully appreciate the nature and extent of the risk and voluntarily incur the risk.

A possible Assumption of Risk agreement has been prepared and sent on to LHCC's attorney for review.

#### **Recommendation:**

If the LHCC attorney is satisfied with some version of this agreement, then the Board should approve its use for members to participate in tree cutting and removal activities.

Pat Majewski, Director

5/25/21

**Lake Holiday Country Club, Inc.**  
**Assumption of Risk, Waiver of Liability & Indemnity Agreement**

**FOR AND IN CONSIDERATION** of the opportunity to voluntarily participate in **tree cutting and removal activities** on my own behalf while being present on Lake Holiday Country Club, Inc. ("LHCC")-owned common area, I understand that I am responsible for my own behavior and well-being. I accept this condition of participation, and I acknowledge that I have been informed of the nature of the general risks involved in this activity. In consideration of being allowed to participate in these activities, I expressly assume such risks.

I understand that LHCC and its officers, directors, employees, members and agents will not be responsible for any harm that may occur to me or my property in connection with my participation in these activities.

I expressly acknowledge that the use of drugs and alcohol during any or all of these activities is done at my own peril and is not allowed or condoned by LHCC.

I understand that this Assumption of Risk Agreement will remain in effect during any subsequent visits to the common area for the purposes of tree cutting and removal.

**Assumption of Risk.** I acknowledge that tree cutting and related activities are potentially hazardous whether I am an active participant or spectator and have inherent risks that may affect me including, but not limited to property damage or loss, temporary or permanent bodily injury, sickness, and even death. I acknowledge that this activity has known and unanticipated risks that could result in physical or emotional injury, death, or damage to myself, to property, or to third parties.

Specific risks related to such activities include, but are not limited to: my own negligence or even carelessness as well as that of other participants and third parties; trees and branches falling on me, especially upon my head; slipping, tripping and falling upon uneven ground; coming upon hidden dangerous obstacles such as holes, tree wells, tree stumps, creeks, rocks and boulders, forest deadfall, etc. It is possible I could be injured during the use of my equipment necessary to the operation of this activity. The weather can be unpredictable and change rapidly, storms or even lightening strikes are possible; exposure to the elements can be uncomfortable and include sunburn, heat exhaustion or heat stroke, cold or hypothermia or fatigue, all of which may diminish my ability to react or respond. Strenuous physical activity, especially if I have an underlying health condition, whether known or unknown to me, may lead to respiratory conditions, heart attack or stroke and damage to other internal organs. I may have encounters with dangerous or aggressive or poisonous wildlife, insects, etc. In the event of an accident, rescue and medical treatment may not be immediately available.

I understand and acknowledge that failing to use or properly use safety equipment such as helmets, boots, safety glasses, and not wearing appropriate clothing increases my risk of injury or of not surviving an accident or incident.

The results of these and other inherent risks may include, but are not limited to: cuts, bruises, splinters, dislocations, muscle strains or sprains, broken bones, lost teeth, eye injury, serious neck and spinal injuries, complete or partial paralysis and/or brain damage, serious injury to internal organs, bones, joints, ligaments, muscles, tendons, and other aspects of my musculoskeletal system, concussions, nerve injuries, heart attacks or strokes, fractured skulls, minor or severe lacerations with extensive bleeding and other serious injury or impairment to other aspects of my body and my general health and well being including loss of mental capacity, loss of sight, speech or hearing.

I agree that I am in sufficiently good health to participate in these activities and that I am free from any medical condition that could interfere with my ability to participate or that could be worsened by participating or that could endanger my health or safety or the health or safety of other participants.

**Insurance.** I certify that I have valid and current insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself.

**Indemnity.** I agree to indemnify and hold harmless LHCC and its employees, officers, directors, members or agents from any and all liabilities, claims, actions, suits, demands, losses, damages, property damage, property loss or theft, costs (including court costs and attorneys' fees) or injury, including death brought about as a result of my involvement in this activity and arising from this activity's inherent risks unless any such personal injury, damage to or loss of my property is directly due to the negligence of LHCC and to reimburse them for any such expenses incurred. I understand and intend that this Assumption of Risk Agreement is binding upon me and upon any other person who might be able to assert a claim including the heirs, executors, administrators and assigns of my estate.

**Breach of Contract.** I agree that should LHCC or anyone acting on their behalf, be required to incur attorney's fees and costs to enforce this Agreement, I agree to pay for all such fees and costs. I expressly agree and acknowledge that the terms and conditions of this Assumption of Risk Agreement is contractual in nature and that I am signing it of my own free will and that there are no impediments or reasons why I would lack the capacity to enter into this contract with LHCC.

**Governing Law, Forum Selection.** In the event I file a lawsuit against LHCC, I agree to do so solely in the Commonwealth of Virginia and Frederick County, Virginia, and I further agree that the substantive law of that state shall apply in that action without regard to the conflict of law rules of that state. I hereby irrevocably waive any other jurisdiction or venue to which I or my estate might otherwise have been entitled.

**Severability.** I agree that if any portion of this agreement is found to be void or unenforceable, the remaining portion shall remain in full force and effect. This document is intended to be interpreted as broadly as possible.

**Modification.** I understand that this document constitutes the entire Agreement between the parties and that it cannot be modified or changed in any way by representations or statements of any nature outside of this document. A copy of this contract can be used as if it were the original.

**Acknowledgment of Understanding.** By signing this document, I acknowledge I have carefully read this Assumption of Risk Agreement and fully understand and accept its terms and conditions including the risks associated as stated herein. I understand I am giving up substantial rights including the right to sue LHCC or any of its officers, directors, agents, members or employees. I represent that I am eighteen years of age or older and legally capable of entering into this agreement.

I am signing this agreement freely and voluntarily, agree to be bound by its terms and am assuming all risks voluntarily. I intend by my signature to provide a complete and unconditional release of all liability to the greatest extent allowed by law.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

**Lake Holiday Country Club, Inc.**  
**Assumption of Risk, Waiver of Liability & Indemnity Agreement**

Whereas, Lake Holiday Country Club, Inc. (“LHCC”), a Virginia non-stock corporation, is the record owner and custodian of certain “common areas” located within the subdivision known as Lake Holiday Estates, in Frederick County, Virginia; and,

Whereas, some of the common areas contain dead, dying, or fallen trees; and,

Whereas, the undersigned person(s) (“Indemnitor”) desire to induce LHCC to allow such Indemnitor to cut and remove the dead, dying or fallen trees located within the common areas; and,

Whereas, the undersigned Indemnitor acknowledges that the cutting and removal of dead, dying and fallen trees is an inherently dangerous activity.

**NOWHEREFORE THIS ASSUMPTION OF RISK, WAIVER OF LIABILITY & INDEMNITY AGREEMENT**, for and in consideration of the opportunity to cut and remove dead, dying and/or fallen trees upon the common areas of LHCC, the undersigned makes the following assumption of risk, waiver of liability and agreement to indemnify LHCC.

- 1) Indemnitor understands that Indemnitor is solely responsible for their safety and well-being.
- 2) Indemnitor understands that the cutting and removal of dead, dying and/or fallen trees is a dangerous activity with inherent risks that could lead to serious bodily injury or death to themselves or others in near proximity to the activity.
- 3) Indemnitor accepts these risks of their own free will and further acknowledges that they are aware of the nature of the general risks involved in this activity. In consideration of being allowed to participate in these activities, Indemnitor expressly assumes all risks associated with the activity of cutting and removing dead, dying and fallen trees and agrees to hold harmless LHCC from any and all claims which may arise from Indemnitor’s tree cutting activities upon the common areas of LHCC.
- 4) Indemnitor understands and acknowledges that LHCC and its officers, directors, employees, members and agents will not be responsible for any harm or injury sustained by Indemnitor or Indemnitor’s property which arises from Indemnitor’s participation in these activities, nor to any harm or injury sustained by any other person or person’s property, arising from Indemnitor’s participation in these activities.
- 5) Indemnitor covenants and agrees that neither Indemnitor nor any other person assisting Indemnitor in the cutting and removal of dead, dying and fallen trees upon the common areas of LHCC shall at any time during which they undertake cutting and removal activities be under the influence of any drugs, alcohol or other mind-altering substance.
- 6) Indemnitor expressly acknowledges that all cutting and removal activities shall be at Indemnitor’s own peril.

**Assumption of Risk.** Indemnitor assumes all risks associated with cutting and removal activities including, but not limited to property damage or loss, temporary or permanent bodily injury, sickness, and even death. Indemnitor further acknowledges that the cutting and removal activity has known and unanticipated risks that

could result in physical or emotional injury, death, or damage to Indemnitor and Indemnitor's property and to the property and/or body of third parties in close proximity to the cutting and removal activities.

Specific risks related to such activities include, but are not limited to: my own negligence or even carelessness as well as that of other participants and third parties; trees and/or branches falling upon indemnitor and or other participant and third parties, especially upon head injury from falling trees and/or branches; slipping, tripping and falling upon uneven ground; coming upon hidden dangerous obstacles such as holes, tree wells, tree stumps, creeks, rocks and boulders, forest deadfall, etc. It is possible I could be injured during the use of equipment necessary to the operation of this activity. The weather can be unpredictable and change rapidly, storms or even lightning strikes are possible; exposure to the elements can be uncomfortable and include sunburn, heat exhaustion or heat stroke, cold or hypothermia or fatigue, all of which may diminish a person's ability to react or respond in a safe manor. Strenuous physical activity, especially if an individual has an underlying health condition, whether known or unknown to them, may lead to respiratory conditions, heart attack or stroke and damage to other internal organs. Indemnitors may encounter dangerous or aggressive or poisonous wildlife, insects, etc. In the event of an accident, rescue and medical treatment may not be immediately available.

Indemnitor understands and acknowledges that failing to use or properly use safety equipment such as helmets, boots, safety glasses, and not wearing appropriate clothing increases the risk of injury or of not surviving an accident or incident.

The results of these and other inherent risks may include, but are not limited to: cuts, bruises, splinters, dislocations, muscle strains or sprains, broken bones, lost teeth, eye injury, serious neck and spinal injuries, complete or partial paralysis and/or brain damage, serious injury to internal organs, bones, joints, ligaments, muscles, tendons, and other aspects of my musculoskeletal system, concussions, nerve injuries, heart attacks or strokes, fractured skulls, minor or severe lacerations with extensive bleeding and other serious injury or impairment to other aspects of my body and my general health and well being including loss of mental capacity, loss of sight, speech or hearing.

Indemnitor agrees that they are in sufficiently good health to participate in these activities and that they are free from any medical condition that could interfere with their ability to participate or that could be worsened by participating or that could endanger their health or safety or the health or safety of other participants.

**Insurance.** Indemnitor certifies that they have valid and current insurance to cover any injury or damage they may cause or suffer while participating, or else Indemnitor agrees to personally bear the full costs of such injury or damage without reservation.

**Indemnity.** Indemnitor agrees to indemnify and hold harmless LHCC and its employees, officers, directors, members or agents from any and all liabilities, claims, actions, suits, demands, losses, damages, property damage, property loss or theft, costs (including court costs and attorneys' fees) or injury, including death brought about as a result of Indemnitor's involvement in cutting and removal of dead, dying and fallen trees and arising from this activity's inherent risks unless any such personal injury, damage to or loss of my property is directly due to the negligence of LHCC and further agrees to immediately reimburse LHCC for any and all such expenses, costs or monetary damages incurred as a result of Indemnitor's activities.

**Binding Nature.** Indemnitor understands and intends that this Assumption of Risk Agreement is binding upon Indemnitor and upon any other person working in concert or at the behest or indemnitor who might be able to

assert a claim including the successors, agents, heirs, executors, administrators and assigns of Indemnitor or Indemnitor's estate.

**Breach of Contract.** Indemnitor further agrees that should LHCC or anyone acting on their behalf, be required to incur attorney's fees and/or other costs to enforce this Agreement, Indemnitor shall be obligated to immediately pay for all such fees and costs. It is expressly agreed and acknowledged that the terms and conditions of this Assumption of Risk Agreement are contractual in nature and that Indemnitor is executing this agreement of their own free will and that there are no impediments or reasons why Indemnitor would lack the capacity to enter into this agreement with LHCC.

**Governing Law, Forum Selection.** All suits relative to this agreement shall be brought in the Circuit Court of Frederick County, Virginia, which Court shall have full jurisdiction over the adjudication of any claim arising from this agreement; and Indemnitor further agrees that the substantive law of the Commonwealth of Virginia shall apply in all actions without regard to the conflict of law rules of this Commonwealth. Indemnitor hereby irrevocably waives any other jurisdiction or venue to which Indemnitor, its agents, successors or estate might otherwise have been entitled to bring suit.

**Severability.** Indemnitor agrees that if any portion of this agreement is found to be void or unenforceable, the remaining portion shall remain in full force and effect. This document is intended to be interpreted as broadly as possible.

**Modification.** Indemnitor understands that this document constitutes the entire Agreement between the parties and that it cannot be modified or changed in any way by representations or statements of any nature outside of this document. A copy of this agreement can be used as if it were the original.

**Acknowledgment of Understanding.** By signing this document, Indemnitor on its own behalf and on behalf of any other person Indemnitor engages in the activity of cutting and removing dead, dying and fallen trees upon the common areas of LHCC, acknowledges that they have carefully read this Assumption of Risk Agreement and fully understands and accepts its terms and conditions including the risks associated as stated herein. Indemnitor understands that they are giving up substantial rights including the right to sue LHCC or any of its officers, directors, agents, members or employees. Indemnitor represents that they are at least eighteen years of age or older and legally capable of entering into this agreement.

Indemnitor is signing this agreement freely and voluntarily, agrees to be bound by its terms and is assuming all risks voluntarily. Indemnitor intends by their signature hereon to provide a complete and unconditional release of all liability to the greatest extent allowed by law.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_