

## DOCK USE AND INDEMNITY LICENSE AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between Cranberry Bay Homeowners Association, Inc., an Ohio non-profit corporation (“**Landowner**”) and \_\_\_\_\_, an owner of a lot or lots in the L. H. Bounds’ Allotment, Julia A. Bounds’ Additions and/or all Additions thereto, aka “Cranberry Bay” and/or “Maple Bay”, all of record at the Licking County, Ohio Recorder’s Office, (referred to herein collectively as the “**subdivisions**”), and a dock or docks or reserved dock(s) area (“**Dock and/or Dock Area**”) in Buckeye Lake, Ohio (“**Lot Owner**”).

WHEREAS, Landowner is the owner of real property abutting the waters of Buckeye Lake and lying between all lots in the subdivisions and said waters (herein referred to as the “**Waterfront Property**”), subject to certain rights in favor of the owners of lots in the subdivisions, including Lot Owner, to use the same in common, under the Grant of Easements and Amended Grant of Easements, and Protective Covenants described below,

WHEREAS, the owners/developers and platters of the subdivisions (referred to herein as “**Grantors**”) transferred the Waterfront Property to Landowner by deed recorded at Instrument No. 200703230007394 in the Licking County, Ohio Recorder’s Office;

WHEREAS, Grantors also made Landowner the assignee of Grantors’ right, title and interest in and to certain easements and protective covenants applicable to the subdivisions, more specifically being a “Grant of Easements” and “Amended Grant of Easements”, and “Protective Covenants”, recorded in Volume 758, Page 917, and Volume 750, Page 69, and Volume 758, Page 914, and Volume 743, Page 499 by Assignment recorded at Instrument No. 200704300010886, all documents being recorded in the Licking County, Ohio, Recorder’s Office;

WHEREAS, Landowner is an assignee of Grantors’ rights and obligations delineated in the “Lake Lands Agreement—Submerged Land” agreement recorded at Volume 823, Page 493 in the Licking County, Ohio, Recorder’s Office;

WHEREAS, Lot Owner is the owner of a lot in the subdivisions known as \_\_\_\_\_ (herein referred to as the “**Lot**”), and those rights to use the Waterfront Property in common with others under the Grant of Easements and Amended Grant of Easements, described above, and is the owner of a Dock and/or Dock Area in Buckeye Lake, Ohio extending from the Waterfront Property under a permit issued by the Ohio Department of Natural Resources, Division Parks and Recreation (“**ODNR**”), with the plate number of \_\_\_\_\_, and with the identification number of \_\_\_\_\_ assigned by Grantors and/or Landowner (herein referred to as the “**Dock and/or Dock Area**”);

WHEREAS, Lot Owner is permitted to “pass on foot-over” the Waterfront Property and under such other terms and conditions of the Grant of Easements and Amended Grant of Easements, described above;

WHEREAS, Lot Owner, is subject to restrictions in the use of its Dock and/or Dock Area pursuant to the above referenced “Protective Covenants”, specifically,

No. 11: “All boat landings, docks and piers and the retaining wall adjacent thereto shall be kept in good repair by the owners thereof.”

No. 13: “No person shall (a) build or erect a boat landing, dock or pier without the written consent of grantors; (b) permit any person not an owner or lessee of lots in the aforesaid addition to keep or maintain a boat of any kind or description at such boat landing, dock or pier, (c) operate a commercial boat landing, dock or pier, (d) have boats for hire or charge for the use of any boat landing, dock or pier, (e) assemble, congregate, loiter or commit or permit any nuisance whatsoever on the waterfront adjacent to the aforesaid additions and boat landings, docks or piers contiguous to the waterfront.”

WHEREAS, Lot Owner wishes to own and use its Dock and/or Dock Area extending from the Waterfront Property, and ODNR will permit construction, modification, maintenance and use of Lot Owner's Dock and/or Dock Area only upon consent of the Landowner and upon application by and registration of the Dock and/or Dock Area in the Owner's name.

NOW THEREFORE, in exchange for the mutual promises contained herein, Landowner (referred to hereafter as "Licensor") and Lot Owner (referred to hereafter as "Licensee") make the following covenants:

## COVENANTS

### 1. Licensor:

- a) Grants Licensee the right to pass by foot over the Waterfront Property in accordance with the above referenced Easement for the additional purpose of access to and use of the Dock and/or Dock Area;
- b) Consents to Licensee's use, construction, modification and maintenance of the Dock and/or Dock Area and/or seawall subject to the following:
  - (i) Prior to any construction, modification or maintenance (other than routine maintenance), Licensee's submission to and approval in writing from Licensor of the proposed construction or modification and/or maintenance of the Dock, said approval being made on the condition that the Dock and/or seawall must be built to ODNR standards and that if the Dock is not permitted by ODNR to be constructed, modified or maintained, it will be removed.
  - (ii) Upon approval by Licensor, and prior to any construction, modification, and/or maintenance (other than routine maintenance), Licensor shall forward the written approval, application fees, plans, etc. to ODNR and Licensee shall secure any and all permits required for the construction, modification or maintenance by Licensee of the Dock and/or seawall, including but not limited to permits issued by ODNR and other governmental agencies.
  - (iii) This provision is not meant to require prior approval of routine maintenance such as cleaning, painting, or replacing shingles (unless a permit is required by the ODNR) or replacing surface planks in kind.
- c) Confirms the term of this License shall be from year to year but shall automatically renew at the end of each term under all of the terms and conditions set forth in this agreement, without the requirement that Licensee notify Licensor of said renewal, or that a new DUILA be signed by Licensee, subject to Licensee's conformance with the covenants, obligations and required submittals and approvals delineated and referenced herein.
- d) Will maintain records of this Dock Use and Indemnity License Agreement ("DUILA") and any renewals and records pertaining thereto.
- e) Each year, thirty (30) days prior to invoicing Licensee, Licensor will deliver to Licensee a written summary of those reasonable and necessary fees and costs directly associated with the next year term for the use of the Waterfront Property; that are associated with the licensing of the Dock and/or Dock Areas and related activity, as distinguished from any separate activities of Licensor as a homeowners association.

2. Licensee:

- a) Agrees to act in accordance with the Protective Covenants referenced above, specifically Nos. 11 & 13.
- b) In the event Licensee's Lot is contiguous to the Waterfront Property, Licensee shall maintain and keep in good repair the retaining wall in front of the his/her Lot except that portion thereof adjacent to any boat landing, dock or pier owned by other parties (No. 10, Protective Covenants).
- c) Understands and agrees that in the event of his/her violation or breach of the Protective Covenants, Licensor may enter the property involved and abate and remove the same, and is entitled to reimbursement for its expenses incurred in abating or removing such violations or breach by Licensee.
- d) Shall pay all personal property taxes or other governmental charges assessed against the Dock and/or Dock Area.
- e) Agrees to comply with all guidelines required by the ODNR, including the payment of all fees and the displaying of required stickers, etc.
- f) Agrees to comply with the terms of this DUILA, including the payment of all fees Licensor is entitled to charge under the terms herein, on or before the required due date as delineated each year in a summary delivered by Licensor to Licensee.
- g) In the event Licensee rents its Lot or permits occupancy and/or use thereof by another party, Licensee shall register the name and contact information of his/her tenant or guest with Licensor prior to tenant's and/or guest's use of the Dock and/or Dock Area; tenant and guest shall be subject to all Dock and/or Dock Area restrictions and requirements delineated and referenced herein and Licensee shall remain liable for all violations and breaches hereunder whether by his/her tenant, guest, or tenant's guests and invitees.
- h) Understands this DUILA is personal to Licensee and is conditioned upon Licensee's ownership of the Lot. In the event Licensee (or his executor or administrator) wishes a new title owner of the Lot to own the Dock and/or Dock Area, said new title owner of the Lot shall be permitted to enter into a DUILA which shall also be transferable to the buyer, transferee, executor or administrator of the new title owner, provided at the closing and/or transfer of the Lot the transferee shall be responsible for payment of all accrued outstanding fees and administrative fees associated with the Dock and/or Dock Area ownership and DUILA, whether due to the Landowner or ODNR. However, in the event Licensee transfers title to the Lot without transfer of ownership of the Dock and/or Dock Area to the new Lot owner, Licensee's DUILA will terminate and Licensor shall assume the right to use the Dock Area, subject to the rules for termination set forth below in "a" of "Termination".
- i) In the event of Licensee's death, this DUILA shall continue in full force and effect with Licensee's estate and Licensee's estate shall be subject to the obligations and requirements of Licensee as delineated herein.
- j) Agrees to indemnify and save and keep harmless Licensor, its trustees, agents, employees, successors and assigns against any and all loss, damage or expense including attorney fees which they or any one of them may sustain or be liable for in consequence of the construction, modification, and/or use of the Dock and/or Dock Area and/or seawall and/or ingress/egress over the Waterfront Property.

## TERMINATION OF DUILA:

This DUILA shall be subject to termination if:

- a) Licensee transfers title to the Lot without transfer of ownership of the Dock and/or Dock Area to the new Lot owner at which time Licensee's DUILA will terminate and Licensor shall assume Dock and/or Dock Area use, subject to the following provisions:
  - (i) The transferring Licensee shall have 45 days from the closing of his/her Lot to remove the Dock structure. In the event transferring Licensee wishes to sell/transfer his/her Dock, the following shall apply:
  - (ii) Prior to the 5<sup>th</sup> day of said 45 days, the transferring Licensee shall notify Licensor that he/she wishes to sell the Dock and state the price for which he/she will sell the Dock. Upon receipt of said notification, Licensor shall offer the Dock at said price to Lot owners on a Dock waiting list in the order they appear and shall notify the transferring Licensee with the contact information of a responder or of no response on or before the 20<sup>th</sup> day of said 45 days. If no sale occurs within said 20 days, transferring Licensee may sell/transfer his/her Dock to a Lot owner in the Subdivisions whose Lot at the time of said sale/transfer is improved with a residence that has an occupancy permit. Upon any sale/transfer, the terms of transfer delineated at 2(h) shall apply. In the event no sale/transfer of said transferring Licensee's Dock occurs, the transferring Licensee must remove the Dock within said 45 days as required at (a)(i) above.
  - (iii) In the event transferring Licensee's Dock is not sold/transferred and transferring Licensee fails to remove his/her Dock within said 45 days, Licensor shall have the right, in its sole option, to take ownership of the Dock or report the Dock as noncompliant with the ODNR. If ODNR fails to act, Licensor or ODNR may remove the Dock without court order or other legal process at the expense of the transferring Licensee.
- b) Licensee fails to comply with the covenants and requirements delineated and referenced herein. In the event of such failure, Licensor shall provide written notice to ODNR and Licensee identifying the failure, the required remedy, and a reasonable time period, not less than 45 days, within which such remedy must be completed. If Licensee fails to satisfy said remedy within the time period allotted, Licensor shall have the right, in its sole opinion, to terminate this DUILA by providing written notice of the same to Licensee. If terminated, Licensor will report the Dock as noncompliant with the ODNR. If ODNR fails to act Licensor or ODNR may remove the Dock without court order or other legal process. If the Dock is removed, Licensee will not be permitted to apply for any dock agreement with Licensor unless and until Licensee has reimbursed the party responsible for the Dock's removal in full. Said reimbursement shall include all costs, fees, etc. required for and arising from the removal of the Dock including but not limited to storage, towing, construction, rents, legal and attorney fees.

**DEFAULT BY LICENSOR**

In the event Licensor, being Cranberry Bay Homeowners Association, Inc., ceases to exist, claims bankruptcy, or is legally prevented from operating as a non-profit corporation and maintaining its obligations under this DUILA, the Licensee's right to Dock ownership and/or Dock Area use, including rights of ingress and egress over the Waterfront Property, conditioned on Licensee's Lot ownership in the subdivisions, shall continue subject to the Protective Covenants and Easements delineated and referenced herein.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**LOT OWNER/LICENSEE**

Signature: \_\_\_\_\_

Lot: \_\_\_\_\_

CBHA Dock ID #: \_\_\_\_\_

**CRANBERRY BAY HOMEOWNERS ASSOCIATION, INC/LICENSOR**

Signature: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.