

# **BEECH MOUNTAIN LAKES ASSOCIATION INC.**

## **ELECTRONIC GATE ACCESS AGREEMENT WITH WAIVER OF LIABILITY AND INDEMNIFICATION**

### **I. Purpose:**

Beech Mountain Lakes Association [the "HOA"] has implemented an Electronic Gate Access System to provide residents with ease of access to the newly secured amenities/common areas provided by the HOA and to protect the investment of each amenity/common area by adding locks and in certain areas, cameras. For these purposes of this "Agreement", specifically, the beach, boat docks, and boat ramp. This Agreement and Waiver of Liability/Indemnification outline the expectations of the HOA and the responsibility of you, the "Member." Electronic gate access is not transferable to renters or to a new homeowner upon sale of your unit. Electronic gate access will be terminated at time of resale for the previous owner and their authorized accessors as well as for renters upon termination of their tenancy.

### **II. FOB Purchase:**

Each member will receive two (2) electronic gate access sign-ups as part of their dues payment. Furthermore, each member may add and purchase additional electronic gate access users for a fee of \$2.50 per additional user. Additional users MUST have a current membership card to be added to the system. However, in order to obtain or purchase electronic gate access, Members must be in good standing with the HOA, which shall include annual dues and garbage paid to date and no unresolved outstanding fines or penalties assessed.

Electronic gate access is non-transferable upon sale of the residence or to renters. Authorized electronic gate access cannot be utilized to admit anyone to the secured areas who would not otherwise be granted access, including Owners, Residents, Renters and anyone who has had their privileges revoked. Failure to abide by these restrictions shall result in a revocation of the Member's electronic gate privileges.

### **III. Terms of Electronic Gate Access Issuance:**

A. Member shall ensure that the electronic gate access assigned to Member's address will only be used by current residents of that address or by members of their immediate family. Member acknowledges that electronic gate access cannot be sold, traded or lent to anyone not living at the Member's address or occupying as a rental.

B. Renters, who must present a current membership card, shall request electronic gate access and acknowledge that they need to abide by all covenants, restrictions, rules and regulations as duly adopted for this Community. Electronic gate access shall be non-transferable upon sale of the Member's unit or change in renter. Homeowners/Renters and all electronic gate access for their account number will be terminated upon the resale of their property or change in rental tenancy.

C. Member shall ensure that each person accessing the Amenity/Common Area, under their account number understands and obeys all posted rules for that Amenity/Common Area. Minors, defined herein as natural persons less than eighteen (18) years of age, shall be permitted access under Member's account if such Minors are 14 years of age or older and an amenity card has been obtained. Minors are not permitted in secured areas if the age limit for such secured areas is 18 years or older or otherwise restricts access by Minors.

D. Member acknowledges that the use of beach, boat launch, and boat docks shall be at Member's own risk and subject to the release, waiver and assumption of risk as hereinafter set forth. Member accepts responsibility for the actions and welfare of Member's guests who use Member's electronic gate access to any of the beach, boat launch, and boat docks areas.

E. Member shall take full responsibility for any damage to any association property by any person using Member's electronic gate access and shall pay for repair or replacement of the damaged property.

F. Member shall at all times remain in good standing with the HOA. There shall be no outstanding dues, garbage and no open violations or outstanding assessments relative to Member's account. Otherwise, the electronic gate access privilege shall be rescinded immediately, and Member shall not be entitled to any refund regarding the initial cost of same.

#### **IV: Electronic Gate Access Release, Waiver, Assumption of Risk and Indemnification and Hold Harmless Agreement**

With the issuance of electronic gate access to Member, the HOA, shall not be responsible for any injury resulting from the ordinary negligence of the HOA or actions of any third party, including but not limited to death or loss of property to any person suffered while on the premises or participating in the use of the beach, boat ramp, and boat docks when applicable.

Ordinary Negligence means the failure to use reasonable care, resulting in unintentional harm or risk of harm, such as minor maintenance oversights or everyday accidents. By signing this agreement, Members acknowledge they assume the inherent risks of using these facilities and release BMLA from liability for claims arising from Ordinary Negligence. Member shall indemnify and hold harmless the HOA for any injury sustained by any person using Member's electronic gate access due to the actions of any person using Member's electronic gate access. Member shall not permit any person to use Member's electronic gate access unless and until such persons have agreed to indemnify and hold harmless the HOA to the same extent as Member under this Agreement. Member shall indemnify and hold harmless the HOA for any claims arising from a person using Member's electronic gate access if such person has not signed a written agreement releasing the HOA from liability to the same extent as the Member has under this Agreement.

In consideration for the issuance of the electronic gate access and use of the beach, boat ramp, and boat docks, the undersigned Member does hereby release and hold harmless Beech Mountain Lakes Association, its affiliated or related entities, officers, directors, agents, representatives, attorneys, servants and employees from any and all present and future claims resulting from ordinary negligence of the HOA and the inherent risk of use of the beach, boat launch, and boat docks including but not limited to any loss, damage, or liabilities sustained by the Member while on or about the premises and use of the amenities.

As a Member of the HOA, you represent that you are fully aware and understand that the HOA does not have nor does it employ or contract with any medical services, nor provide for ordinary or emergency medical services including but not limited to emergency cardiovascular assistance. The HOA does not provide emergency medical services. Members are responsible for their own safety and should use facilities with appropriate caution.

As an HOA Member, you also represent that you are fully aware and understand that losses, such as injury, disability or death, may result from the actions, inaction, or negligence on your part, on the part of the Association, on the part of others, the rules of play or use, or the condition of the beach, boat launch, and boat docks being utilized by the electronic gate.

Accordingly, with the foregoing being fully understood, you hereby agree to indemnify, save, defend and forever hold harmless the Association, its affiliated or related entities, officers, directors, agents, representatives, servants and employees from any and all liabilities, damages, costs, penalties, fines, fees, losses, suits, demands, causes of action, judgments, obligations, claims and expenses including but not limited to reasonable attorney fees and associated costs incurred, sustained, arising out of or connected with any injury to person or property forever caused or from any matter whatsoever arising from or in connection with your use of the electronic gate access to access the beach, boat launch, and boat docks and the related facilities or equipment. The Member also hereby releases and shall hold harmless the HOA from liability for any injury including but not limited to death or loss of property to any person suffered while on the premises or participating in the use of the amenities for any reason including but not limited to the utilization of any equipment or the playing, practicing or watching of any activity occurring in or about any of the amenity/common areas wherever, whenever or however the claims may arise including but not limited to travel to and from the various amenities relative to the electronic gate access issuance.

Member assumes all of the foregoing risks and accepts personal responsibility for any and all damages and loss that may be incurred in using Member's electronic gate access or utilizing the beach, boat docks or boat ramp, including any loss of property, injury, permanent disability or death resulting therefrom.

**V. Gross Negligence and Willful Misconduct:**

Nothing in this Agreement shall be construed to waive the right of the Member to recover against the HOA for action or inaction undertaken with Gross Negligence or Willful Misconduct, as below defined:

- Gross Negligence shall mean a severe or reckless disregard for the safety of others with foreknowledge of potential dangers and willful disregard for the risk posed by such dangers
- Willful Misconduct shall mean intentional wrongful acts or a conscious disregard for known safety risks

**VI: Miscellaneous**

By signing this agreement, Member understands that the Member shall assume the ordinary risks of using the HOA's beach access, boat launch, and boat docks. Member releases and shall hold harmless the HOA from claims arising from ordinary negligence in connection with any person's use of these amenities under or through Member's electronic gate access.

This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may not be amended or modified except by a written agreement signed by both parties. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard for its conflict of law principles. Any dispute arising under this Agreement shall be brought, if at all, in accordance with Article 18 of the Beech Mountain Lakes Declaration of Protective Covenants, Exceptions, Reservations and Conditions recorded in the Luzerne County Recorder of Deed's Office at Deed Book 2158 Page 1028, with "Member" being synonymous with the Owner referenced in such Article. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under applicable law, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. It is the intention of the parties that, if any such provision is determined to be invalid, illegal, or unenforceable, a valid, legal, and enforceable provision shall be substituted that most closely reflects the original intent of the parties, and that the remainder of the Agreement shall remain in full force and effect. Member, by executing this Agreement, represents that good and adequate compensation has been provided for, that this Agreement is not the product of mistake or duress, and that the terms found herein have been fully reviewed and accepted by the Member.

WHEREFORE the Member executes this Agreement on the date provided below, INTENDING TO BE LEGALLY BOUND HEREBY:

Date Signed: \_\_\_\_\_

Signature of Member \_\_\_\_\_