

**Amended and Restated Agreement  
Concerning Variance for  
Friends and Descendants of Johnson's Island Civil War Prison, Inc.**

This Amended and Restated Agreement Concerning Variance for Friends and Descendants of Johnson's Island Civil War Prison, Inc. ("Amended and Restated Agreement") is made as of May 15, 2007 by, between and among the Friends and Descendants of Johnson's Island Civil War Prison, Inc. ("Friends"), Heidelberg College ("Heidelberg"), the Johnson's Island Property Owners Association ("JIPOA") and the Baycliffs Homeowners Association ("BHOA"), (collectively, "Parties" or individually "Party").

WHEREAS, on February 6, 2003, Friends (then known as Friends and Descendants of Johnson's Island, Inc.) filed with the Village of Marblehead's Board of Zoning Appeals an application for a use variance to allow limited, private educational and scientific activities to be conducted on approximately 17 acres of land owned by Friends (the "Friends Property") in the interior of Johnson's Island (the "Variance") and

WHEREAS, an Agreement was filed on March 14, 2003 in the office of the Ottawa County Recorder, OR Book 899, Pages 563-576 reciting additional conditions agreed among the Parties for the use of the Friends Property, which Agreement was binding upon the Parties for a term of ten (10) years (the "Original Variance Agreement"); and

WHEREAS, JIPOA and BHOA have entered into that certain Agreement of Understanding dated February 28, 2007 in anticipation of the full and final settlement of issues that have arisen between them concerning the use and maintenance of the Johnson's Island Causeway, Tollgate and all platted, private roads located on Johnson's Island, all of which is more fully described in Ottawa County Common Pleas Court Case No. 04-CVH-202 captioned *Baycliffs Homeowners Association, Inc. v. Johnson's Island Property Owner's Association, et al.*, ("BHOA v. JIPOA"); and

WHEREAS, JIPOA and BHOA seek to have all additional owners of property on Johnson's Island, not represented by JIPOA or BHOA, enter into that certain Operating Agreement for Governance of Johnson's Island Causeway and Roadways (the "Operating Agreement"), of even date herewith; and

WHEREAS, each of the signatories to this Agreement represents that it has the authority to enter into this Amended and Restated Agreement.

NOW, THEREFORE, in consideration of the mutual promises and consideration set forth herein, the Parties agree as follows:

1. From and after May 15, 2007 (the "Effective Date"), this Amended and Restated Agreement shall replace in its entirety the Original Agreement and shall be deemed to be the complete agreement among the Parties concerning the use of the Friends Property.

2. The Parties consent and agree that the Agreed Terms and Conditions stipulated by the Parties concerning the Variance issued by the Marblehead Board of Zoning Appeals in favor of Friends shall be and are hereby amended and restated as set forth in the "Amended and Restated Terms and Conditions for Use Variance for Friends and Descendants of Johnson's Island Civil War

Prison, Inc." which is attached to and made a part of this Agreement (the "Amended Terms and Conditions").

3. Friends and Heidelberg agree to comply with the Amended Terms and Conditions, and further agree to acknowledge and execute the Operating Agreement.

4 Commencing with 2007, Friends shall contribute to the governance of the Johnson's Island Causeway and Roadways in the same manner as that required of every other owner of property on Johnson's Island as provided in the Operating Agreement. Friends shall be notified in advance of every meeting of the Johnson's Island Road Commission as described in the Operating Agreement and shall have all of the rights, privileges and obligations of an Owner with respect to the Road Commission.

5. Except in emergencies, the Friends Property shall be accessed only by one driveway located on Baycliffs Drive.

6. Friends and Heidelberg agree jointly and severally to indemnify, defend and hold harmless JIPOA and BHOA and their members up to the limits of Friends and Heidelberg's insurance policies, from any liability or damage arising from the activities of Friends and Heidelberg on Johnson's Island and the approaches thereto, except for liability or damage resulting from the gross negligence or intentional acts or omissions by JIPOA or BHOA or their members. Friends and Heidelberg shall obtain and maintain automobile and general liability insurance policies covering their activities on Johnson's Island and the approaches thereto, with limits of not less than \$1 million (automobile) and \$1 million (general liability) per occurrence with umbrella coverage of \$10 million for each (Heidelberg) and \$500,000 (general liability) per occurrence (Friends), and shall use their best efforts to obtain waivers of subrogation from their insurance carriers in favor of BHOA, JIPOA, their members and their insurance carriers. BHOA and JIPOA shall be designated as additional named insured on Friends and Heidelberg's policies and Heidelberg and Friends shall furnish BHOA, JIPOA and the Johnson's Island Road Commission with proof of insurance coverage by January 15 of each year for that year.

7. Friends and Heidelberg agree that, except for planned events as described herein, they shall not promote casual visitor traffic to Johnson's Island. The Parties stipulate that the private educational programs authorized by the Variance to enrolled students and teachers are not prohibited by this provision. The Parties further acknowledge that the 150-year anniversary of the Civil War (2011-2015) will fall during the term of this Agreement. Friends may conduct or participate in occasional Civil War memorial observances, ceremonies and activities on the Friends Property. On any such occasion upon which members of the public are expected to attend, Friends shall notify the Road Commission no less than thirty (30) days in advance, and shall comply and cooperate with all reasonable requests of the Road Commission for the regulation of traffic and the use of the Causeway and island roadways.

8. The Parties hereto agree to consult and cooperate with each other concerning the construction of a building, which may be located on or adjacent to the Friends Property, which will provide rest room facilities, a classroom and, if desired, food preparation facilities for use by the Friends in the conduct of its educational programs on the Friends Property. The Parties further agree that such building may be a freestanding building on the Friends Property for the exclusive use of Friends or, if possible, a multi-purpose building on or adjacent to the Friends Property which may be used as agreed among all of the Parties.

9. Except as set forth in paragraph 8, above, Friends and Heidelberg agree not to seek any other modification to the Variance which would substantially change the uses permitted by the use variance which is the subject of this Agreement, nor to the zoning classification of the Friends Property, prior to March 14, 2018. Friends and Heidelberg further agrees not to seek any modification to the Variance for the purpose of creating single- or multiple-family building lots at any time prior to March 14, 2023 on any property owned by Friends on Johnson's Island. The Parties further agree that they shall review this Agreement and the Terms and Conditions on or before March 14, 2013 to determine whether additional amendments are necessary or desirable at that time.

10. Upon a prima facie showing of a violation of any material provision of this Agreement by a Party, which violation the Parties are unable to resolve by agreement, any non-violating Parties shall be entitled to immediate temporary injunctive relief prohibiting such violation, in addition to any other rights and remedies available to them.

11. The Parties agree that the Ottawa County Courts shall have jurisdiction to directly enforce, and to directly enjoin violations of, the provisions of this Amended and Restated Agreement without regard to the doctrine of exhaustion of administrative remedies.

12. The Parties shall cause a copy of this Agreement to be recorded with the Ottawa County Recorder. This Agreement shall run with the land and expire on March 14, 2018 unless extended by the Parties, and shall be binding on the Parties, their successors and assigns.

Notices to the Parties shall be directed as follows:

Friends:

David R. Bush, Ph.D., Chairman  
3272 County Road 175  
(419) 448-2327  
email: [dbush@heidelberg.edu](mailto:dbush@heidelberg.edu)

Heidelberg College:

Stephen Storck, Ph.D., V. P. of Administration, CFO  
College Hall, 310 E. Market Street  
Tiffin, OH 44883-2462  
(419) 448-2227  
email: [sstorck@heidelberg.edu](mailto:sstorck@heidelberg.edu)

BHOA

Richard Schulz, President  
3645 Confederate Drive  
Marblehead, OH 43440  
(216) 389-2540  
[rschulz@cschulzbuilding.com](mailto:rschulz@cschulzbuilding.com)

JIPOA

Dennis L. Kennedy, President  
P. O. Box 111  
Marblehead, OH 43440  
(419) 798-8210  
[dlk8ggi@core.com](mailto:dlk8ggi@core.com)

cc: Mary Beth Eisman, Esq.  
4081 Quarrystone Court  
Marblehead, OH 43440  
(419) 798-4903  
[Maribel842@aol.com](mailto:Maribel842@aol.com)

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by its duly authorized officer, as of the day and year first above written.

Friends and Descendants of Johnson's  
Island Civil War Prison, Inc.

By: \_\_\_\_\_  
David R. Bush, Ph.D., Chairman

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

Heidelberg College

By: \_\_\_\_\_  
Stephen Storck, Ph.D., V. P. of  
Administration, CFO

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

Baycliffs Home Owners Association

By: \_\_\_\_\_  
Richard Schulz, President

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

Johnson's Island Property Owners  
Association

By: \_\_\_\_\_  
Dennis Kennedy, President

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, did appear David R. Bush, Ph.D., the Chairman of Friends and Descendants of Johnson's Island Civil War Prison, Inc., an Ohio not-for-profit corporation, who did sign the foregoing instrument, and did acknowledge that the same is his free act and deed and the free act and deed of such corporation.

In Witness Whereof, I have hereunto subscribed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Print: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, did appear Stephen Storck, Ph.D., the Vice President Of Administration and CFO of Heidelberg College, who did sign the foregoing instrument, and did acknowledge that the same is his/her free act and deed and the free act and deed of such institution.

In Witness Whereof, I have hereunto subscribed and sealed this instrument this \_\_\_\_ day of

\_\_\_\_\_, 2007.

\_\_\_\_\_  
Print: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, did appear Dennis Kennedy, the President of Johnson's Island Property Owners Association, an Ohio not-for-profit corporation, who did sign the foregoing instrument, and did acknowledge that the same is his free act and deed and the free act and deed of such corporation.

In Witness Whereof, I have hereunto subscribed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Print: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, did appear Richard Schulz, the President of Baycliffs Home Owners Association, an Ohio not-for-profit corporation, who did sign the foregoing instrument, and did acknowledge that the same is his free act and deed and the free act and deed of such corporation.

In Witness Whereof, I have hereunto subscribed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Print: \_\_\_\_\_

This Instrument Prepared By:  
Mary Beth Ballard-Eisman, Esq.  
4081 Quarrystone Court  
Marblehead, OH 43440