

# **2019 S. LIBERTY PARK USE & MAINTENANCE AGREEMENT LIBERTY TOWNSHIP, DELAWARE COUNTY**

Liberty Park Use and Maintenance Agreement with the Liberty Township Trustees 10104 Brewster Lane, Suite 125, Powell, Ohio and Liberty Twp/Powell YMCA, 7798 Liberty RD N Powell, OH 43065

## **1. Purpose:**

The purpose of this agreement is to state the covenants and conditions under which Liberty Twp/Powell YMCA shall receive Preferred Scheduling and have Preferred use of shelter 3 and field space located at Liberty Park, 2845 Home Road, Powell, Ohio for recreational use, to hold summer camp events only.

## **2. Term:**

The term of this agreement shall become effective on and be inclusive of \_\_\_\_\_ or on and be inclusive of the date the last Party signs this Agreement, whichever comes later, and continue through October 31, 2019.

## **3. Renewal:**

Upon written agreement of the Parties, this Agreement may be renewed for successive one (1) year periods subject to the same terms and conditions provided herein and upon any such terms and conditions as may be specifically agreed upon, added and/or amended in writing by the parties.

## **4. Authority:**

Consistent with the rule making authority provided by R.C.505.261, the Board is authorized to enter this agreement.

## **5. No Preference:**

In reaching this agreement, all persons and/or organizations were treated on a like or similar basis, and no differentiation was made on the basis of race, color, religion, national origin, sex, or political affiliation.

## **6. Liberty Twp/Powell YMCA Liaison:**

Liberty Twp/Powell YMCA shall designate a Liberty Twp/Powell YMCA officer to serve as a primary liaison to the Park Supervisor regarding Athletic field and/or Park usage. In addition to a primary liaison, Liberty Twp/Powell YMCA shall also designate a separate Liberty Twp/Powell YMCA officer as a back-up liaison (primary and back-up liaison collectively "Liberty Twp/Powell YMCA liaison"). In the event the primary liaison is unavailable or unable to act in the capacity of a liaison, the back-up liaison shall serve in the same capacity as the primary and in the primary liaison's stead.

Prior to the commencement of this Agreement, Liberty Twp/Powell YMCA shall provide in writing to the Township complete contact information, including, but not limited to, names, addresses, phone numbers (home and cell), and email addresses for both Liberty Twp/Powell YMCA liaisons. Liberty Twp/Powell YMCA shall

provide updated contact information for the Liberty Twp/Powell YMCA liaisons to the Park Supervisor as such information changes.

At any time, Liberty Twp/Powell YMCA may appoint different or change either or both of the designated Liberty Twp/Powell YMCA liaisons. If any such appointments or changes are made, Liberty Twp/Powell YMCA shall immediately and prior to such appointment or change taking effect notify the Park Supervisor in writing of such appointment or change. Such notification shall include the same contact information as is required above to be provided for a Liberty Twp/Powell YMCA liaison.

#### **7. Scheduling:**

To obtain a preferred scheduling reservation of the Athletic Fields, the Liberty Twp/Powell YMCA liaison shall provide advance notification to the Park Supervisor of Liberty Twp/Powell YMCA's desire to use certain athletic fields in the Park. Advance notification shall be given as follows:

- A. Advance Notification shall be made in writing.
- B. Advance notification shall be provided at least one (1) month prior to the date Liberty Twp/Powell YMCA intends to use the athletic fields. In lieu of providing advance notification to the Park Supervisor of each individual event, game, and/or activity, Liberty Twp/Powell YMCA may provide a complete or partial game schedule to the Park Supervisor in accordance with the other requirements of this section. Assuming the game schedule meets all requirements of this section, such game schedule shall be considered advance notification of Liberty Twp/Powell YMCA's desire to use the specified athletic fields for each event, game, and/or activity shown on the game schedule.
- C. Advance Notification shall include all of the following information:
  - I. The date and times (beginning and end) of the intended use of the athletic fields.
  - II. Identify the specific athletic fields that Liberty Twp/Powell YMCA intends to reserve or use.
  - III. Specify the type of recreational use to be made of the identified athletic fields (i.e. soccer, baseball or softball games).

Assuming advance notification has been properly given by the Liberty Twp/Powell YMCA liaison and received by the Park supervisor in accordance with this section, Liberty Twp/Powell YMCA shall receive a preferred scheduling reservation for use of the specified athletic fields.

The Park Supervisor shall post a schedule showing the reservations he/she has received for the use of the Athletic fields in a conspicuous location at the Township Park Department Office located at 2845 Home Road, Powell, Ohio 43065.

The Park Supervisor may schedule athletic fields and enter into agreements with other organizations for times not reserved by the Liberty Twp/Powell YMCA as part of the Liberty Twp/Powell YMCA preferred scheduling reservations.

#### **8. Scope of use:**

During such times as Liberty Twp/Powell YMCA has properly secured, in accordance with this agreement, a preferred scheduling reservation of the athletic fields, Liberty Twp/Powell YMCA shall receive exclusive actual use of the scheduled athletic fields ahead of and before the general public or any other user of such athletic fields. Such preferred use by Liberty Twp/Powell YMCA is subject to the following conditions, restrictions, and terms.

**A. Athletic field usage:**

- i. Liberty Twp/Powell YMCA shall comply with all Park and/or athletic field rules and/or regulations and shall assure that all of its employees volunteers, coaches, players, and/or any other persons participating in Liberty Twp/Powell YMCA events, games, and/or other Liberty Twp/Powell YMCA activities held in the Park and/or athletic fields abide by and comply with such rules and/or regulations.
- ii. Liberty Twp/Powell YMCA shall furnish all equipment, goals, nets, corner flags, balls, bases, chalk and/or supplies for the athletic fields such as line paint and goal pins or (weights). This includes Liberty Twp/Powell YMCA's responsibility to line the athletic fields, baseball and softball diamonds.
- iii. There shall be no practicing at any time on any of the athletic fields. There is a dedicated practice area to be used for soccer practice(s).
- iv. One (1) athletic field, as designated by the Park Supervisor shall be idle and remain idle for as long as the Park Supervisor determines to allow for athletic field maintenance and needed turf recovery. The designated idle athletic field shall rotate as determined by the Park Supervisor. Such designation shall be posted at the athletic field and such designation and rotation shall be communicated to the Liberty Twp/Powell YMCA liaison by the Park Supervisor. Until use of the idle athletic field is expressly permitted by the Park Supervisor, there shall be no use (games or practice) of the idle athletic field.
- v. In addition to the idle athletic field, the Park Supervisor, in his or her sole discretion, may from time to time determine that due to the condition of all or portions of certain athletic field(s), present conditions affecting all or portions of such athletic field(s) or for other good cause that such athletic field(s) or portions thereof should not be used and should be closed. In the event the Park Supervisor makes such a determination and closure, the Park Supervisor shall post at the athletic field notice of such closure and communicate such closure to the Liberty Twp/Powell YMCA liaison. There shall be no use (games or practice) of the closed athletic field(s) or portion(s) thereof until use is expressly permitted by the Park Supervisor.
- vi. The Park and/or athletic field(s) shall not be used for tournaments, camps, extra Liberty Twp/Powell YMCA events, unless the Parties agree to such use via a separate agreement and fee per event. Liberty Twp/Powell YMCA cannot run concessions or contract out for concessions services on Township Property.
- vii. This agreement shall be operative for May 20<sup>th</sup> 2019 to August 19<sup>th</sup> 2019.

**B. Cancellations:**

Cancellations shall occur as follows:

- i. Liberty Twp/Powell YMCA may cancel an event, game or activity. Where such cancellation occurs, the Liberty Twp/Powell YMCA liaison shall contact the Park Supervisor as soon as the Liberty Twp/Powell YMCA liaison knows of the cancellation and notify him or her of the cancellation and, if necessary reschedule the event, game or activity.
- ii. The Park Supervisor may cancel events, games, or activities due to weather or athletic field conditions. Such cancellations are made in the interest of safety and/or athletic field maintenance and/or preservation. In the event of such cancellation, the Park Supervisor shall contact the Liberty Twp/Powell YMCA liaison and notify him or her of the cancellation. The Park Supervisor shall attempt to provide as much advance notice of the cancellation as possible. At the time of the notice of cancellation or at some later time, the Parties may reschedule the event, game, or activity.

**C. Maintenance:**

Liberty Twp/Powell YMCA, at its own expense, shall line and paint all athletic field(s). The Liberty Twp/Powell YMCA liaison shall notify in advance and schedule such lining and painting with the Park Supervisor. If athletic field conditions are not favorable for line painting, the Park Supervisor may request the field painting be performed at a different date when field conditions are more favorable.

Liberty Twp/Powell YMCA shall not apply any treatments to any Liberty Township athletic field(s). (This includes but is not limited to: (herbicides, pesticides, fertilizers).

Liberty Twp/Powell YMCA shall be responsible for the safe and adequate condition of all goals, nets or other apparatus that is necessary to its activities. If the Township or Park Supervisor objects to the appearance or condition of any such items, Liberty Twp/Powell YMCA shall immediately obtain and install a replacement.

Athletic fields: Liberty Twp/Powell YMCA must furnish all supplies and equipment for athletic fields.

Liberty Twp/Powell YMCA representatives, coaches, parents shall not perform any work on the athletic fields after a rain event, without the permission of Park Supervisor or Park staff on duty.

**D. Irrigation:**

The athletic fields are not artificially irrigated. The Parties shall not artificially irrigate the athletic fields.

**E. Restrooms:**

**F. Traffic:**

As determined by Liberty Twp/Powell YMCA or the Park Supervisor, if traffic from any Liberty Twp/Powell YMCA game(s), event(s), and or activities create congestion and/or traffic flow issues either within or outside the Park by vehicles traveling through the Park or entering and/or exiting the Park, Liberty Twp/Powell YMCA shall arrange, provide, and pay for, at no expense to the Board, Park Supervisor, or Township, a uniformed off-duty police officer to provide traffic control. Advance notice of the identity of the officer and the dates and times that such officer is to be deployed shall be provided to the Park Supervisor.

**G. Parking:**

Parking lot(s) for the parking of vehicles is/are designated and available in the Park. Vehicles parked in the park shall only be parked in such parking lot(s) and only in spaces in the parking lot(s) designed and designated for the parking of vehicles. There shall be no parking at any time of vehicles in any designated lanes of travel allowing vehicles to enter or exit the park, travel through the Park or through a parking lot in the Park, or on any grass areas.

Emergency vehicles must be able to enter, exit, and travel through the Park at all times. Lanes of travel must therefore be kept open and clear sufficiently allowing such vehicles to pass.

Parking regulations shall be strictly enforced. Vehicles parked in violation of these restrictions may be ticketed and/or towed at the owner's expense.

Liberty Twp/Powell YMCA shall assure compliance with these parking regulations. Any repeated failure of Liberty Twp/Powell YMCA to enforce compliance with these parking regulations may be considered a breach of this agreement and be grounds for termination of this agreement.

It is Liberty Twp/Powell YMCA's responsibility to monitor the amount of games being scheduled at one time.

Liberty Twp/Powell YMCA should allow for ample time between games for vehicles to empty parking lots before the start of the next scheduled games.

**H. Refuse and Garbage Collection:**

Where in the sole discretion of the Park Supervisor, the Park Supervisor determines that, due to the volume of trash generated by Liberty Twp/Powell YMCA events, games, and/or activities, extra or additional refuse collections beyond normal refuse collections are necessary, the Park Supervisor shall notify the Liberty Twp/Powell YMCA liaison of the need for such extra or additional

collections. The Park Supervisor shall then arrange for extra and additional collections. Liberty Twp/Powell YMCA shall be responsible for and pay the full actual cost of any and all such extra or additional refuse collection(s).

The Township shall invoice Liberty Twp/Powell YMCA for all extra or additional refuse collection(s). Liberty Twp/Powell YMCA shall pay such invoice in full no later than the due date indicated on the invoice which due date shall not be less than ten (10) days after the date of the invoice. Failure to timely pay an invoice by the due date shall result in a ten percent (10%) penalty on any unpaid balance and may be considered breach of this agreement and be grounds for termination of this agreement.

**I. Use of Park and Athletic Field(s) by General Public:**

During such times as Liberty Twp/Powell YMCA has preferred use of the athletic field(s), properly reserved and secured in accordance with this agreement:

- i. Liberty Twp/Powell YMCA shall have exclusive use of the scheduled athletic fields  
At all times when Liberty Twp/Powell YMCA does not have preferred use of the athletic field(s), the general public, in accordance with Park rules, shall have full use and access to the Park and athletic field(s).
- ii. The general public shall, in accordance with Park rules, have full access to and be permitted to use all other areas of the Park exclusive of the athletic field(s).

**J. Signs:**

Liberty Twp/Powell YMCA shall obtain prior authorization from the Park Supervisor before placing any signs in the Park or from the Road Superintendent before placing any sign in a public road right-of-way ("ROW") located within the Township. The Township retains the right to remove any and all signs placed by Liberty Twp/Powell YMCA in the Park and/or ROW and not properly authorized in accordance with this section.

**K. Liberty Twp/Powell YMCA Representative:**

Liberty Twp/Powell YMCA shall have an adult supervisor or a responsible adult present at all times during its usage of the premises.

**L. Limitation:**

This agreement and the terms and conditions contained herein apply to Liberty Park and do not apply to any other Park or athletic field(s) located in any other Park in the Township.

**9. Township Responsibilities:**

The Township shall provide the following:

- A. Athletic field use Monday thru Friday only.

- B. The Township shall provide general maintenance of the Parkand athletic fields.
- C. The Township shall provide and maintain driveways and parking areaswithin the Park.
- D. The Township shall provide regular refuse collection in the Park at no cost to Liberty Twp/Powell YMCA. As provided elsewhere in this agreement, extra or additional refuse collection(s) shall also be made by the Township, however, Liberty Twp/Powell YMCA shall be responsible for and pay the full actual cost of any and all such extra or additional refuse collection(s).

#### **10. Township Rights:**

The Township reserves the right to:

- A. Prohibit use of the Parkand/or athletic field(s) in the event of inclement weather, post inclement weather damage or other issues caused by the inclement weather, for health, safety, and turf conditions, and/or for other good cause.
- B. To enter into use agreements with organizations for athletic field use during those times not specifically reserved by Liberty Twp/Powell YMCA under the Preferred Scheduling reservations set forth by this agreement.
- C. To hold other events in the Park, simultaneously or otherwise, which do not compete for parking or use of the athletic field(s) being used by Liberty Twp/Powell YMCA and which generally do not interfere with Liberty Twp/Powell YMCA events, games, and/or activities.
- D. Enter the Parkand/or athletic field(s) at any time to perform maintenance as may from time to time become necessary or be required by law or for other good cause.
- E. Park Supervisor may request moving athletic game fields at any time, due to excessive wear of turf or goal box damage.

#### **11. No lease:**

This agreement is not and does not constitute a lease. The parties agree that this agreement should not be interpreted as a lease and that this agreement does not confer any of the obligations, rights, or benefits of a lease on the parties.

#### **12. Compensation:**

In exchange for preferred use of the athletic field(s), Liberty Twp/Powell YMCA agrees to pay twelve-percent (12%) of the registration fee for the first one hundred (100) participants to Liberty Township and ten percent (10%) of the registration fee for all participants over the first one hundred (100). Liberty Twp/Powell YMCA will provide Liberty Township with a breakdown of participant registrations for the 2019 summer camps, along with an accounting of monies due by August 31<sup>st</sup> 2019. Liberty Twp/Powell YMCA agrees to pay Liberty Township the monies due as soon as the final participant accounting is approved by Park Supervisor. Such amounts shall be paid in its entirety into the Liberty Township Park Capital Improvements Fund to be used for the improvement and maintenance of the Park or other Liberty Township Parks. Failure to timely pay shall result in a ten percent (10%) penalty on any unpaid balance and no events, games and/or activities shall be held/played until such monies and penalty are paid in full.

#### **13. Insurance**

Liberty Twp/Powell YMCA shall carry and maintain current throughout the life of the Agreement and without lapse, such bodily injury and property damage liability insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may

arise out of or result from Liberty Twp/Powell YMCA's use of the Park and/or Athletic Fields and/or Liberty Twp/Powell YMCA's performance of this Agreement or from the use of any vehicle(s) in connection therewith, and shall include coverage for the indemnification as described above.

Prior to commencement of this Agreement, Liberty Twp/Powell YMCA shall present to the Park Supervisor current certificates of insurance and shall maintain current such insurance during and throughout the entire term of this Agreement, without lapse. Said insurance shall, at a minimum be of the type of insurance and include the amount of coverage on said policies of insurance as is specified below:

- A. Commercial General Liability Insurance: Commercial general liability insurance with coverage in an amount equal to and covering all sums which Liberty Twp/Powell YMCA may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of or at least one million dollars (\$1,000,000.00) coverage per occurrence with an annual aggregate of at least two million dollars (\$2,000,000.00), including coverage for subcontractors, if any are used, covering all events, games, and/or Liberty Twp/Powell YMCA activities held at the Park and/or on the Athletic Fields. This insurance shall include, but not be limited to, the following coverage:
  - i. Broad Form Property Damage
  - ii. Personal Injury
- B. Umbrella or Excess Liability Insurance: Umbrella or excess liability insurance (over and above commercial general liability insurance) with coverage in an amount equal to and covering all sums which Liberty Twp/Powell YMCA may or shall become legally obligated to pay as damages, but in an amount providing for a minimum of at least two million dollars (\$2,000,000.00) of coverage and covering all events, games, and/or Liberty Twp/Powell YMCA activities held at the Park and/or on the Athletic Fields.
- C. Auto/Vehicle Liability Insurance: Auto/vehicle liability insurance covering all owned, leased, non-owned, and/or hired vehicles used in connection with Liberty Twp/Powell YMCA's use of the Park and/or Athletic Fields and/or Liberty Twp/Powell YMCA's performance of this Agreement with coverage in an amount equal to that required by law and covering all sums which Liberty Twp/Powell YMCA may or shall become legally obligated to pay as damages, but in an amount providing for minimum coverage of at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

The Board, Park Supervisor, and Township shall be named as "Additional Insured" on the policies listed in paragraphs A, B, and C above. Liberty Twp/Powell YMCA shall be responsible for any and all premiums for all required policy(ies) of insurance.

The insurance company needs to be identified for each insurance policy and coverage. The certificates of insurance are to be signed by a person authorized by the insurance company to bind coverage on its behalf. All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance.

The above required insurance coverage shall be primary insurance as respects the Indemnified Parties and any insurance maintained by the Indemnified Parties shall be excess to the above required insurance and shall not contribute to it.

The insurer shall provide thirty (30) days written notice to the Park Supervisor before any cancellation or non-renewal of insurance coverage. Failure to provide such written notice will obligate the insurer to provide coverage as if cancellation or non-renewal did not take place. If there is any change in insurance

carrier or liability amounts, a new certificate of insurance must be provided to the Park Supervisor within seven (7) calendar days of change. During the life of the Agreement, the Board may require Liberty Twp/Powell YMCA to provide respective and/or additional certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default. In addition, to the rights and protections provided by the insurance policies as required above the Board, Park Supervisor, and Township shall retain any and all such other and further rights and remedies as are available at law or in equity.

#### **14. WORKER'S COMPENSATION INSURANCE:**

Liberty Twp/Powell YMCA shall carry and maintain throughout the life of the Agreement Worker's Compensation Insurance as required by Ohio law and any other state in which work will be performed. Liberty Twp/Powell YMCA shall be responsible for any and all premiums for such policy(ies). At any time throughout the life of the Agreement the Board or Park Supervisor may request proof of such insurance. Proof of such insurance shall be promptly provided upon request.

#### **15. RELEASES OF LIABILITY:**

Throughout the term of this Agreement and without lapse, Liberty Twp/Powell YMCA shall have in place and maintain effective a policy requiring that before participating in any Liberty Twp/Powell YMCA event, game, and/or activity occurring in the Park and/or on the Athletic Fields and in exchange for the ability to participate in the same, that all persons or, if the person is a minor, a parent or legal guardian on behalf of the minor, commit to, agree to, and sign a written waiver of rights, a release of liability of, and an agreement to indemnify Liberty Twp/Powell YMCA and the Indemnified Parties (collectively "Release"). The Releases all include, but not be limited to, the following:

- A. A waiver of all rights to bring a cause of action against Liberty Twp/Powell YMCA and the Indemnified Parties for any accident, injury, bodily injury, Sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the presence of the person in the Park and/or on the Athletic Fields, occurring while the person was in the Park and/or on the Athletic Fields, and/or through engagement and/or participation in any Liberty Twp/Powell YMCA events, games, and/or any other Liberty Twp/Powell YMCA activities occurring in the Park and/or on the Athletic Fields.
- B. A release releasing Liberty Twp/Powell YMCA and the Indemnified Parties from all liability for any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the presence of the person in the Park and/or on the Athletic Fields, occurring while the person was in the Park and/or on the Athletic Fields, and/or through engagement and/or participation in any Liberty Twp/Powell YMCA events, games, and/or any other Liberty Twp/Powell YMCA activities occurring in the Park and/or on the Athletic Fields.
- C. Indemnification of and an agreement to hold free and harmless Liberty Twp/Powell YMCA and the Indemnified Parties from liability for any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to the presence of the person in the Park and/or on the Athletic Fields, occurring while the person was in the Park and/or on the Athletic Fields, and/or through engagement and/or participation in any Liberty Twp/Powell YMCA events, games, and/or any other Liberty Twp/Powell YMCA activities occurring in the Park and/or on the Athletic Fields.

Complete signed copies of all Releases all be provided to the Park Supervisor prior to the person participating in any Liberty Twp/Powell YMCA event, game, or other Liberty Twp/Powell YMCA activity.

Failure to secure a Release from any person prior to the person participating in any Liberty Twp/Powell YMCA event, game, or other Liberty Twp/Powell YMCA activity and/or provide a copy of such Release to the Park Supervisor may be considered breach of this Agreement and be grounds for termination of this Agreement.

As used in this Section, the word "person" includes, but is not limited to, whether compensated or volunteer, all coaches, coaching staff, referees, game officials, players regardless of team affiliation (home or visitor), individuals providing maintenance, individuals handling equipment, all parents and volunteers assisting teams, and/or any other individuals assisting in any way with an i-9 event, game, or other Liberty Twp/Powell YMCA activity.

#### **16. RECREATIONAL IMMUNITY:**

The Parties agree that no participant in any Liberty Twp/Powell YMCA event, game, or other Liberty Twp/Powell YMCA activity held in the Park and/or on the Athletic Fields has paid a fee or consideration to the Board, Park Supervisor, or Township to enter upon the Park or Athletic Field premises or to participate in any event, game, and/or other Liberty Twp/Powell YMCA activity organized or held under or pursuant to this Agreement. Any fee or consideration paid by a participant is/was paid only to Liberty Twp/Powell YMCA as solely a club or league fee. As a result, the Parties further agree that the Board, Park Supervisor, and Township have preserved and maintain the recreational user immunity conferred on the same by R.C. § 1533.181 and that no interpretation shall be made to the contrary. Liberty Twp/Powell YMCA consents and agrees to waive all of its rights and support and defend, by all necessary means, such immunity as pertains to the Board, Park Supervisor, and Township.

#### **17. INDEMNITY:**

Liberty Twp/Powell YMCA shall provide indemnification as follows:

- A. To the fullest extent of the law and without limitation, Liberty Twp/Powell YMCA agrees to and shall indemnify and hold free and harmless the Indemnified Parties from any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to Liberty Twp/Powell YMCA's or any Liberty Twp/Powell YMCA subcontractor's use of the Park and/or Athletic Fields and/or Liberty Twp/Powell YMCA's or any Liberty Twp/Powell YMCA subcontractor's performance of this Agreement or the actions, inactions, or omissions of Liberty Twp/Powell YMCA or any Liberty Twp/Powell YMCA subcontractor, including, but not limited to the performance, actions, inactions, or omissions of Liberty Twp/Powell YMCA's or any Liberty Twp/Powell YMCA subcontractor's boards, board members, officers, officials, employees, volunteers, agents, servants, or representatives. Liberty Twp/Powell YMCA agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that Liberty Twp/Powell YMCA shall, at its own expense, promptly retain defense counsel to represent defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. Liberty Twp/Powell YMCA further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that Liberty Twp/Powell YMCA shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, fines, penalties, fees, and/or expenses, including but not limited to attorney's fees.

B. Liberty Twp/Powell YMCA shall assume full responsibility for, pay for, and shall indemnify and hold free and harmless the Indemnified Parties from any harm, damage, destruction, injury, or loss, regardless of type or nature, known or unknown, realized or unrealized, to any property, real or personal, belonging to the Indemnified Parties or others, including but not limited to real estate, buildings, structures, fixtures, furnishings, equipment, vehicles, supplies, accessories and/or parts arising out of or resulting in whole or in part from any actions, inactions, or omissions negligent or accidental, actual or threatened, intentional or unintentional of Liberty Twp/Powell YMCA, Liberty Twp/Powell YMCA's boards, board members, officers, officials, employees, volunteers, agents, servants, or representatives, any Liberty Twp/Powell YMCA subcontractor, and/or any participant in any Liberty Twp/Powell YMCA event, game, and/or other Liberty Twp/Powell YMCA activity.

#### **18. CRIMINAL BACKGROUND CHECKS:**

Prior to any adult (any person age eighteen (18) or older) participating in any Liberty Twp/Powell YMCA event, game, and/or other Liberty Twp/Powell YMCA activity held in the Park and/or on the Athletic Field(s), where such adult mayor will have direct contact or interaction with any minor, Liberty Twp/Powell YMCA shall require such adult to submit to a criminal background check and Liberty Twp/Powell YMCA shall evaluate the results of such check in accordance with this Section. Criminal background checks shall be performed by an agency competent to perform such checks. Liberty Twp/Powell YMCA shall be responsible for arranging for such criminal background checks and paying for all costs associated with the criminal background checks.

The results of all criminal background checks conducted pursuant to the requirements of this Agreement shall be provided by the conducting agency to Liberty Twp/Powell YMCA. Liberty Twp/Powell YMCA shall evaluate the results of all criminal background checks to determine, based on such checks, the suitability of the subject to participate in Liberty Twp/Powell YMCA events, games, and/or other Liberty Twp/Powell YMCA activities held in the Park or on the Athletic Field(s) where such adult mayor will have direct contact or interaction with any minor. Liberty Twp/Powell YMCA shall be solely responsible for all such suitability determinations and, in accordance with the Indemnity provisions of this Agreement, shall indemnify and hold free and harmless the Indemnified Parties from any consequences of such decision and any event, occurrence, criminal activity perpetration, victimization, or other activity resulting from, occurring as a consequence of or despite such determination, or in any way connected to such decision.

Liberty Twp/Powell YMCA shall indefinitely maintain and preserve the results of all criminal background checks conducted pursuant to the requirements of this Agreement. Liberty Twp/Powell YMCA shall, upon request, immediately make the results of a criminal background check conducted pursuant to this Agreement available to the Board and/or Park Supervisor.

#### **19. ACCESS TO RECORDS:**

At any time, during regular business hours, with reasonable notice and as often as the Board, Park Supervisor, Township or other agency or individual authorized by such board/persons may deem necessary, Liberty Twp/Powell YMCA shall make available to any or all the above named parties or their authorized representatives, all sub Agreements invoices, receipts, payrolls, personnel records, enrollees records, participant records, reports, documents and all other information or data relating to all matters covered by this Agreement. The above named parties shall be permitted by Liberty Twp/Powell YMCA to inspect, audit, make excerpts, photo static copies and/or transcripts of any and all documents relating to all matters covered by this Agreement.

#### **20. RETENTION OF RECORDS:**

Liberty Twp/Powell YMCA for a minimum of three (3) years after expiration or termination of this Agreement, agrees to retain and maintain, shall retain and maintain, and shall assure that all of his/her/its subcontractors retain and maintain all records, documents, writings and/or other information related to performance of this

Agreement. If an audit, litigation, or other action is initiated during the time period of this Agreement, Liberty Twp/Powell YMCA shall retain and maintain such records until the action is concluded and all issues are resolved or the three (3) years have expired, whichever is later.

## **21. TERMINATION:**

This Agreement may be terminated as follows:

### **A. Termination for the Convenience:**

Either Party may terminate this Agreement at any time and for any reason by giving at least thirty (30) days advance notice, in writing, to the other Party.

The Parties may immediately or upon a mutually agreeable date terminate this Agreement at any time and for any reason upon the mutual written consent of the Parties.

### **B. Breach or Default:**

Upon breach or default of any of the provisions, obligations or duties embodied in this Agreement, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a specified reasonable period of time. If the breach or default is not satisfactorily remedied within the specified time period, this Agreement may, at the election of the aggrieved Party, be immediately terminated.

### **C. Waiver:**

The waiver of any occurrence of breach or default is not and should not be interpreted as a waiver of any such subsequent occurrences. If any of the Party fails to perform an obligation or obligations under this Agreement and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive other failure(s).

Waiver by either Party shall be authorized in writing and signed by an authorized representative(s) of the waiving Party. In the case of the Township, any waiver shall be approved by the Board.

Termination pursuant to this section shall relieve the Parties of any and all further obligations under this Agreement, except that Liberty Twp/Powell YMCA, if Liberty Twp/Powell YMCA initiates termination of this Agreement, shall forfeit its deposit.

The Parties retain and may, without limitation, exercise any and all available administrative, contractual, equitable or legal remedies.

## **22. NOTICE:**

All notices, consents, and/or other communications which may be required to be given by this Agreement or by operation of law, shall be in writing and shall be deemed duly given if personally (hand) delivered, sent by certified or registered United States Mail or recognized courier, return receipt requested, to the following individuals at the following addresses or facsimile numbers and shall be effective when sent, provided, or transmitted:

Powell YMCA  
Brad McCain  
Chief Financial Officer  
YMCA of Central OH  
7798 Liberty Rd N  
Powell, OH 43065  
Fax:  
Email:

Liberty TWP  
Michael Landon  
Liberty Township Park Supervisor  
2845 Home Road  
Powell, OH 43065  
Fax: (740) 938-2001  
Email: [malandon@libertytwp.org](mailto:malandon@libertytwp.org)

## **23. NON-DISCRIMINATION / EQUAL OPPORTUNITY /CIVIL RIGHTS:**

Liberty Twp/Powell YMCA certifies  
and agrees as follows:

- A. Liberty Twp/Powell YMCA all subcontractors, and/or any person acting on behalf of Liberty Twp/Powell YMCA or any subcontractor shall comply with any and all applicable federal, state, and/or local laws prohibiting discrimination and providing for equal opportunity.
- B. Liberty Twp/Powell YMCA all subcontractors, and/or any person acting on behalf of Liberty Twp/Powell YMCA or any subcontractor shall not in any way or manner discriminate on account of race, color, religion, sex, age, disability, handicap, sexual orientation, gender identity or military status as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

## **24. ACCESSIBILITY:**

Liberty Twp/Powell YMCA certifies  
and agrees as follows:

- A. Liberty Twp/Powell YMCA all subcontractors, and/or any person acting on behalf of Liberty Twp/Powell YMCA or any subcontractor shall make all services/programs provided pursuant to this Agreement accessible to the disabled/handicapped.
- B. Liberty Twp/Powell YMCA all subcontractors, and/or any person acting on behalf of Liberty Twp/Powell YMCA or any subcontractor shall comply with any and all applicable federal, state, and/or local laws mandating accessibility and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), all requirements imposed by the applicable HHS regulations (45 CFR 8;4) and all guidelines and interpretations issued pursuant thereto.

## **25. DRUG FREE ENVIRONMENT:**

Liberty Twp/Powell YMCA shall comply with all applicable federal, state, and local laws regarding drug-free and smoke free workplaces and environments and shall have established and have in place a drug-free policy. There shall be no drug or alcohol usage in the Park. Liberty Twp/Powell YMCA shall assure that all of its employees, subcontractors, volunteers, players, and/or any other persons participating in Liberty Twp/Powell YMCA events, games, and/or other Liberty Twp/Powell YMCA activities held in the Park do not use drugs or consume alcohol in the Park. Liberty Twp/Powell YMCA shall make a good faith effort to ensure that all of its employees, subcontractors, volunteers, players, and/or any other persons participating in Liberty Twp/Powell YMCA events will not purchase, transfer use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

## **26. SUBCONTRACTING:**

Liberty Twp/Powell YMCA may not subcontract any portion of this Agreement.

## **27. ASSIGNMENT:**

This Agreement and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the prior express signed written consent of the other non-assigning/non-transferring Party.

## **28. GOVERNING LAW:**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

**29. SIGNATURES:**

Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.

**30. SEVERABILITY:**

The provisions of this Agreement are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall nevertheless be binding and enforceable.

**31. ENTIRE AGREEMENT:**

This Agreement, including its Attachments and Exhibits, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements/contracts relating to the subject matter hereof, and may only be amended in writing with the mutual written and signed consent of the Parties.

Liberty  
Twp/Powell  
YMCA

Signature  Date 1-7-19

Printed Name, Title

Address:

Telephone:

Email:

BOARD OF TRUSTEES  
LIBERTYTOWNSHIP  
DELAWARE COUNTY,  
OHIO

*Not present*  
Shyra Eichhorn, Trustee

Date

Melanie Leneghan, Trustee

Date *Jan 7. 2019*

*Michael Gemperline*  
Michael Gemperline

Date *Jan 7 2019*

Board of Trustees  
Liberty Township, Delaware County Ohio c/o  
Matt Huffman, Township Administrator  
Liberty Township Government *Office*  
10104 Brewster Lane, Suite 125  
Powell, Ohio 43065  
Telephone: (740) 938-2000  
Email: [mhuffman@libertytwp.org](mailto:mhuffman@libertytwp.org)

Fiscal *Officer* Countersignature:

*Nancy Deunite*  
Nancy Deunite

Date *1/7/2019*

Approved as to form:

Carol O'Brien  
Delaware County Prosecuting Attorney

**AUDITOR'S CERTIFICATION(RC S70S.41(D)):**

No Township Funds are expended under this Agreement. No Fiscal *Officer's* Certification is required.