

RESOLUTION #18-0806-09

Approving Memorandum of Understanding with Classics Eagles

WHEREAS, the Board of Trustees approved Resolution 18-0305-10, entering into a Park Use and Maintenance Agreement for South Liberty Park with Classics Eagles, and

WHEREAS, Classics Eagles has requested extended hours and requested permission to supply lighting towers.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO to accept and approve the attached Memorandum of Understanding Regarding Certain Uses of South Liberty Park.

Motion made by Leneghan and seconded by Gemperline.

Vote: yes Mrs. Eichhorn yes Mr. Gemperline yes Mrs. Leneghan

This Resolution shall be in force and become effective immediately upon its execution.

Aug. 16, 2018
Date

Melanie Leneghan
Melanie Leneghan, Trustee

Mike Gemperline
Mike Gemperline, Trustee

CERTIFIED BY:

Nancy Denutte/
Nancy Denutte, Fiscal Officer

Shyra Eichhorn
Shyra Eichhorn, Trustee

**MEMORANDUM OF UNDERSTANDING
REGARDING CERTAIN USES OF SOUTH LIBERTY PARK:**

**1. TEMPORARY EXTENSION OF THE HOURS OF OPERATION; AND,
2. USE OF PORTABLE LIGHT TOWERS**

This Memorandum of Understanding Regarding Certain Uses of South Liberty Park ("MOU") is entered into this AUGUST 6, 20 18 by and between the Liberty Township Board of Trustees, Delaware County, Ohio ("Board"), whose principal place of business is located at 10104 Brewster Lane, Suite 125, Powell, Ohio 43065 and:

Classic Eagles
Name ("User")

P.O. Box 461
LEWIS CENTER, OH
43035

Address of Principal Place of Business

(Individually "Party," collectively "Parties").

PRELIMINARY STATEMENTS

WHEREAS, pursuant to R.C. § 511.31(F), a board of township trustees may adopt bylaws, rules, and regulations for the government and control of any public park within the township limits and which is not under the control of a board of park commissioners; and,

WHEREAS, South Liberty Park ("Park") is a public park wholly located within Liberty Township, Delaware County, Ohio ("Township") and which is under the control of the Board; and,

WHEREAS, in connection with evening activities it conducts in the Park, the User desires to temporarily extend the hours of operation of the Park and also desires to temporarily place and use portable light towers at the Park; and,

WHEREAS, to accommodate the User's evening activities in the Park, the Board desires to regulate the hours of operation of the Park and the User's use of such light towers in the Park.

MOU

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual promises and agreements of the Parties contained herein, it is agreed as follows:

1. TERM. The term of this MOU shall begin on September 1, 2018 continue until November 1, 2018, unless otherwise terminated as provided in this MOU.

2. EXTENSION OF HOURS. To accommodate the User's evening activities conducted in the Park, the Park hours of operation shall be temporarily extended as follows and only for the following period of time:

Temporary Park Hours of Operation	Effective Dates
7:30 AM – 8:45 PM	September 1, 2018 until November 1, 2018

Beginning on November 1, 2018, the Park hours of operation shall return to the regularly scheduled of hours of operation as otherwise established by the Board.

3. USE OF LIGHT TOWERS. The User may place and use portable light towers is the Park on a temporary and limited basis in connection with evening activities it conducts in the Park subject to all of the following:

- a. It is understood that the need for portable light towers is to light the User's evening activities conducted in the Park, which would otherwise be in waning daylight or darkness due to shorter daylight hours caused by the change of seasons.
- b. The portable light towers shall only be used to light playing fields used for the User's evening activities. Light from the portable light towers shall be directed on and shall only be used to light the playing fields being used by the User for its evening activities.
- c. Only four (4) portable light towers shall be permitted. The Liberty Township Park Supervisor ("Supervisor") shall have authority to permit the User to add additional portable light towers as the Supervisor, within his/her sole discretion, deems appropriate.
- d. All lights on the portable light towers shall be extinguished and all generators used to power the portable light towers shall be shut-off by 8:30 PM.
- e. The portable light towers shall not interfere with Park operations and/or other users/uses of the Park.
- f. User shall be solely responsible for the portable light towers, including, but not limited to, acquisition, placement, maintenance, and use of the portable light towers.
- g. User shall be solely responsible for all fuel, oil, supplies, and/or other materials required to operate the portable light towers.
- h. User shall be solely responsible for any and all damage to the Park, any Park facilities, buildings, structures, equipment, trees, shrubs, plants, and/or vegetation, and/or the property of others caused by placing, removal, moving, positioning, locating, setting, and/or by use of the portable light towers, including, but not limited to, damage caused by vehicles used to place, remove, move, position, locate, and/or set the portable light towers and/or the static placement of the portable light towers. Damage shall include, but is not limited to, ruts in the ground caused by moving and/or static placement of the portable light towers and/or by vehicles used to move or place the portable light towers.
- i. When not in use, the User shall fully lower, properly stow the light boom, and secure all portable light towers. Securance shall include, but is not limited to, removing and securing all ignition keys and/or rendering the portable light towers incapable of being started or turned-on by anyone except an authorized person under the control of the User, rendering all functions of the light towers, including the ability to raise or lower the

towers, incapable of being tampered with and/or operated except by an authorized person under the control of the User, rendering the portable light towers incapable of being moved or the trailer dolly adjusted (raised or lowered) except by an authorized person under the control of the User, and all other safety precautions to prevent use or tampering with the portable light towers.

- j. The User shall place plainly visible and legible weather and wind resistant signs on all sides of the portable light towers stating "No Climbing on Portable Light Towers. Do Not Touch." User shall assure that such signs shall remain in place and legible at all times.
- k. At all times, the User shall render and take all safety precautions to make the portable light towers resistant to all weather and wind conditions.
- l. Only adults over the age of eighteen (18) and under the control of the User shall operate any and all function of the portable light towers.
- m. User shall use and operate the portable light towers in accordance with the manufacturer's operator's manual and consistent with all manufacturer's recommendations, regulations, and guidelines. All safety precautions and safety equipment recommended by the manufacturer to be used with or in conjunction with the use of the portable light towers shall be used and/or employed.
- n. User shall be solely responsible for any and/all damage to and/or vandalism of the portable light towers and/or the destruction of the portable light towers, regardless of how such damage, vandalism, or destruction was caused.
- o. User shall be solely responsible for any and all injuries or death caused to any person by the portable light towers, regardless of how the injury or death was caused.
- p. User shall be solely responsible for and shall immediately correct and/or remedy, by whatever means necessary, any and all excessive noise or light pollution complaints which result from use of the portable light towers. User shall immediately notify the Supervisor, using the following contact information, if any such complaints are received and advise the Supervisor as to how the complained about issue has been remedied and/or corrected.

Liberty Township Park Supervisor

Michael Landon

Name

2845 Home Rd.

Powell, OH 43065

Address

(740) 881-5432

Phone

- q. No less than two (2) User site coordinators shall be physically on-site and present at the Park at all times when the portable light towers are in use and such persons shall remain physically on-site and present at the Park until the portable light towers have been extinguished and properly secured and until all participants in the User's activities have left the Park.
- r. User shall be solely responsible for obtaining any and/or all permits and/or licenses necessary to transport, use, and/or operate the portable light towers.
- s. User shall be solely responsible for all costs, regardless of source or nature, associated with placement, removal, moving, positioning, locating, setting, and/or using the portable light towers.
- t. Upon termination of this MOU, regardless of reason, User shall immediately remove the portable light towers from the Park. In no event shall the portable light towers remain in the Park after the expiration of the term of this MOU. All costs of removal shall be solely that of the User.
- u. User shall provide to the Board contact information, including name, address, and cell phone number, for at least two (2) User representatives who shall be available at all times and can be contracted regarding the portable light towers. Contact information for these representatives is as follows:

1. MICHAEL LENTZ
Name

327 Vista Ridge Dr
DELAWARE, OH 43015

Address

614.570.2605
Cell Phone

2. ALAN GARCIA
Name

409 Orange Point Dr.
LEWIS Center, OH 43035

Address

562-884-3422
Cell Phone

- v. User shall comply with and abide by all other applicable Park rules and regulations.

4. NO EXCHANGE OF MONEY. No actual funds are to be exchanged between the Parties in connection with this MOU. This MOU does not require the expenditure of any Township moneys/funds.

5. CONSIDERATION. The Parties agree that the benefits derived from and received by each Party as a result of this MOU are good and valuable consideration and that this MOU is supported by sufficient good and valuable consideration. The Parties agree not to challenge this MOU on the basis of a lack of consideration.

6. TERMINATION.

This MOU may be terminated as follows:

A. Termination for Convenience

The Board may terminate this MOU at any time and for any reason by giving at least seven (7) days advance written notice to the User.

or

The Parties may terminate this MOU at any time by signed mutual written agreement.

B. Immediate Termination

In the event of an emergency, the Board may immediately terminate this MOU. The Board, in its sole discretion, shall determine what constitutes an emergency.

C. Breach or Default

Upon breach or default of any of the provisions, obligations, or duties embodied in this MOU, 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 MOU may, at the election of the aggrieved Party, be immediately terminated.

D. Waiver of Breach or Default

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 either Party fails to perform an obligation or obligations under this MOU 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 person or a quorum of the authorized board.

Termination pursuant to this section shall relieve the Parties of any further obligation under this MOU. If this MOU is terminated pursuant to this section, User shall have no cause of action against the Board or Township. The Board, without limitation, retains the right to exercise all available administrative, contractual, equitable or legal remedies.

7. **INDEMNIFICATION.**

The User shall provide indemnification as follows:

- A. To the fullest extent of the law and without limitation, the User agrees to and shall indemnify and hold free and harmless the Board and Township and all of their respective boards, officers, officials, employees, volunteers, agents, and representatives (collectively "Indemnified Parties") from and against any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, fees, penalties, 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 the portable light towers, the User's performance of this MOU, or the actions, inactions, or omissions of the User, including, but not limited to the performance, actions, inactions, or omissions of the User's boards, officers, officials, employees, volunteers, agents, or representatives (collectively "Contracted Parties"). The User agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that the User 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. The User further agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties, that the User shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs, fines, fees, penalties, and expenses, including, but not limited to attorney's fees.
- B. The User 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 the Contracted Parties.

8. **INSURANCE.** User shall carry and maintain throughout the term of the MOU and/or until the portable light towers are fully removed from the Park, whichever is later, without lapse, the following policies of insurance with the following minimum coverage limits.

- a. Commercial General Liability Insurance with minimum coverage limits of at least one million dollars (\$1,000,000.00) per occurrence, with an annual aggregate of at least two million dollars (\$2,000,000.00).
- b. For vehicles to be used by User in connection with this MOU, Auto/Vehicle Liability Insurance covering all owned, leased, non-owned, and/or hired vehicles so used with minimum coverage limits 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.

Prior to commencement of this MOU, User shall present to the Board current certificates of insurance for the above required policies 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.

The Board and Liberty Township, Delaware County, Ohio shall be named as "Additional Insured" on the above listed policies of insurance.

User shall be responsible for any and all premiums for all required policy(ies) of insurance.

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 in respect to the Board and Township and any insurance maintained by the Board and Township 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 Board 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 Board within seven (7) calendar days of change.

During the term of the MOU, the Board may request and User shall timely produce additional certificate(s) of insurance. Failure of User 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 shall retain any and all such other and further rights and remedies as are available at law or in equity.

9. NOTICES. All notices, consents, and/or other communications which may or are required to be given by this MOU or by operation of law, unless otherwise stated in this MOU, shall be in writing and shall be deemed duly given if personally (hand) delivered, sent by certified or registered United States Mail, return receipt requested, sent via nationally recognized and reputable overnight express courier, return receipt requested, or by email, confirmation of delivery, to the following individuals at the following addresses and shall be effective when sent or transmitted:

Board:

Matt Huffman
Liberty Township Administrator
Liberty Township Government Office
10104 Brewster Lane, Suite 125
Powell, Ohio 43065

Email: mhuffman@libertytwp.org

User:

MICHAEL LENTZ

Name

327 Vista Ridge Dr
DELAWARE, OH 43015

Address

Email: MLENTZ@CLASSICSEAGLES.COM

10. ASSIGNMENT. The User shall not assign this MOU.

11. NO AUTHORITY TO BIND OTHER PARTY. Neither Party shall have the authority or right to bind or obligate the other Party in any manner.

12. GOVERNING LAW AND VENUE. This MOU shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this MOU shall be filed in and heard before the courts of Delaware County, Ohio and such courts shall be deemed to have jurisdiction. The User hereby irrevocable consents to such applicable law, venue, and jurisdiction.

13. AUTHORITY. The Board is authorized by R.C. § 511.31(F) to adopt the bylaws, rules, and regulations contained in this MOU.

14. MODIFICATIONS, SUPPLEMENTS, AND AMENDMENTS. This MOU may be modified, supplemented, and/or amended by mutual agreement of the Parties. Such modifications, supplements, and/or amendments shall be in writing and signed by the Parties.

15. SEVERABILITY. The provisions of this MOU 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.

16. HEADINGS. The subject headings of the paragraphs in this MOU are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

17. DRAFTING. This MOU shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

18. COUNTERPARTS. This MOU may be executed in counterparts.

19. ENTIRE AGREEMENT. This MOU shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements, whether written or oral, between the Parties relating to the subject matter hereof.

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

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the dates indicated below.

CLASSIC EAGLES


Signature

August 8, 2018
Date

MICHAEL LENTZ
Printed Name

Excp. Director
Title

327 VISTA RIDGE DR

DELAWARE OH 43015

Address

LIBERTY TOWNSHIP BOARD OF TRUSTEES
DELAWARE COUNTY, OHIO

Melanie Leneghan
Melanie Leneghan

Trustee

August 6, 2018
Date

Michael Gemperline
Michael Gemperline

Trustee

Shyra Eichhorn
Shyra Eichhorn

Trustee

Liberty Township Government Office
10104 Brewster Lane, Suite 125
Powell, Ohio 43065

Attest:

Nancy Denutte
Nancy Denutte
Liberty Township Fiscal Officer

Aug. 6, 2018
Date

Approved as to form:

Carol Hamilton O'Brien
Delaware County Prosecutor

Date

NO FISCAL OFFICER'S CERTIFICATION REQUIRED (RC 5705.41(D)):

No actual funds are to be exchanged between the Parties in connection with this MOU. No Fiscal Officer's Certification is required.