

**AGREEMENT BETWEEN NOCKAMIXON TOWNSHIP AND
THE NOCKAMIXON COMMUNITY DAY ASSOCIATION, INC. TO ASSUME ALL
OPERATIONS OF THE ANNUAL NOCKAMIXON COMMUNITY DAY**

THIS AGREEMENT is entered into this ____ day of _____, 2010, between Nockamixon Township, Bucks County, Pennsylvania, (“Township”) a Pennsylvania Second Class Township with a principal business address of 589 Lake Warren Road, P.O. Box 100, Ferndale, PA 18921 and the Nockamixon Community Day Association, Inc., (“NCDA”) a Pennsylvania not-for-profit corporation, with a principal business address of _____.

WHEREAS, the Township has held an annual Nockamixon Community Day (“Community Day”);

WHEREAS, residents of the Township have formed the NCDA as a Pennsylvania not-for-profit corporation;

WHEREAS, NCDA requested that the Board of Supervisors (“Board”) of the Township grant NCDA the authority to operate, fundraise, organize, advertise, and any other necessary functions in the furtherance of the annual Community Day to NCDA;

WHEREAS, NCDA is a Pennsylvania not-for-profit corporation and is not an official body of the Township;

WHEREAS, the Board adopted Resolution 3-17-2010 (“Property Resolution”), which, *inter alia*, transferred certain personal property of the Township to NCDA for the use in connection with Community Day; and

WHEREAS, the Board adopted Resolution 1-20-2010 (“Authorization Resolution”), which, *inter alia*, granted authority to NCDA to operate Community Day, on certain conditions,

including a condition that the NCDA enter into a written agreement memorializing the terms of the Authorization Resolution.

NOW THEREFORE, in accordance with the aforesaid recitals, the Township and NCDA, intending to be legally bound, hereby agree as follows:

1. Authority. The Township and NCDA agree that NCDA shall be granted full authority to operate the annual Community Day, subject to the terms and conditions of this Agreement and the Authorizing Resolution .
2. Limitations of NCDA Authority; Relationship of Parties. NCDA agrees not to hold itself out, directly or by implication, as an official body of the Township, not to use the official seal of the Township, and not to hold out Community Day as an official Township event. NCDA shall not be authorized or empowered hereunder to bind the Township or to execute any contracts or commit the Township in any way. This Agreement is not intended to and shall not be interpreted to create any employment, partnership, joint venture or other business association between the Township and NCDA other than the contractual relationship set forth herein. It is understood and agreed that the Township shall not be liable for any loss, damage or risk of loss caused by NCDA, during the performance and furtherance of the terms and conditions of this Agreement, except as otherwise required by this Agreement or law.
3. Insurance. Prior to the effective date of this Agreement, NCDA shall procure and maintain, at NCDA's sole cost, with insurance companies licensed to do business in Pennsylvania, insurance in connection with the services provided pursuant to this Agreement, as follows:

- a. **General Liability Coverage in the minimum amount of One Million Dollars (\$1,000,000.00) for each claim with respect to death or bodily injury of one person as a result of one occurrence and not less than Three Million Dollars (\$3,000,000.00) in aggregate for each claim with respect to death or bodily injury of more than one person as a result of one occurrence, and for damage to property in the amount of One Million Dollars (\$1,000,000.00) insuring NCDA and Township against any liability that may accrue against them jointly or severally on account of any occurrences in connection with, about, during or after Community Day and during the term of this Agreement or in consequence of NCDA's undertakings contemplated herein and resulting in bodily injury, personal injury, death or property damage to any third party. NCDA shall include in such insurance policies coverage for and against any liabilities arising from NCDA's contractual liabilities and liability coverage for any vehicles and other equipment related to Community Day.**
- b. **The above described policy shall, to the extent procurable, include a waiver of subrogation with respect to Township. Under the above described policy, NCDA shall name Township as an additional insured. Prior to the effective date of this Agreement and prior to July 31 of each subsequent contract year, NCDA shall deliver to the Township certificates of insurance with respect to all policies so procured, including existing, additional, and renewal policies. All policies of insurance shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to both the Township and**

NCDA. Failure to so notify the Township of such change or cancellation shall nullify said notification. All insurance companies with whom NCDA shall obtain insurance policies shall be licensed to conduct business in Pennsylvania and shall have current A.M. Best's key ratings of "A+" or better. If NCDA fails to obtain and maintain the insurance required by this Section, the Township may terminate this Agreement immediately, without the giving of prior notice, written or otherwise.

4. Indemnification. To the extent not prohibited by applicable law, NCDA shall defend, indemnify and hold the Township and Township's officials, officers, directors, employees, agents, and legal representatives harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses, whether incurred at the trial, pretrial, or appellate level) arising from or relating to activities performed or to be performed by NCDA (or its officers, directors, agents, employees, representatives and others for whom NCDA is responsible) under this Agreement or other acts or omissions of NCDA (or its officers, directors, agents, employees, representatives and others for whom NCDA is responsible), including, but not limited to, acts or omissions related to the corporate operations of NCDA, any licensure of NCDA, and any filings by NCDA with agencies of the Township, the Commonwealth of Pennsylvania or the United States of America, to the fullest extent permitted by law, except to the extent such liabilities were caused by Township's criminal misconduct, gross negligence or fraud. NCDA's duty to indemnify the Township shall extend to all liability, loss, damage, cost, or

expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the term of this Agreement.

5. Non-Discrimination. NCDA covenants and agrees to plan for and operate Community Day in a manner that ensures full and equal community participation in and opportunity for the public to exhibit at Community Day, without regard for race, color, religion, creed, national origin, familial status, age, gender, disability, political views, and/or any other constitutionally or statutorily protected status.
6. Township Exhibits at Community Day. NCDA agrees to provide free exhibit space at Community Day for all Township committees which submit an Organization Space form to NCDA for such exhibit space.
7. NCDA Meetings. NCDA agrees that its meetings will be open to the public. NCDA shall provide the Township with notice of each meeting at least five (5) business days prior to each meeting. At a minimum, the notice shall state the name of NCDA, the purpose of the meeting, and the date, time and address of the place of the meeting.
8. Inspection of Books and Records. The Township shall have the right, after five (5) business day's prior written notice to NCDA, to inspect the books and records of NCDA at reasonable times and during normal business hours.
9. Continuing Obligations. Nothing herein shall relieve NCDA of any of its lawful obligations, including, but not limited to, those established under the ordinances of the Township. At all times during the term of this Agreement, NCDA shall and covenants to remain a Pennsylvania not-for-profit corporation in good standing with the Commonwealth of Pennsylvania.

10. Limitation or Grant of Rights. Nothing contained herein shall limit the rights of the Township or grant any rights to the NCDA, except as specifically set forth herein.
11. Termination. Except as otherwise set forth herein, the Township reserves the right, in its sole, complete and total discretion, to revoke its authorization set forth in the Authorizing Resolution and terminate this Agreement, upon prior written notice to NCDA.
12. Return of Property. If this Agreement terminates for any reason, including due to the dissolution of NCDA, the parties agree that NCDA shall return to the Township all of the property transferred to NCDA ("Property") pursuant to the Property Resolution. NCDA shall return the Property within three (3) business days of the termination of this Agreement. Due and reasonable care shall be required in the return of the Property. NCDA shall be responsible for reimbursing the Township for any damage caused to the Property after notice of termination of this Agreement has been made until the time that the Township takes possession of the Property. It is understood and agreed that NCDA shall not be responsible for returning the children's prizes and miscellaneous paper plates and napkins that are identified in Exhibit A to the Property Resolution. It is also understood and agreed that NCDA shall not be responsible for returning any item that was duly disposed of with an authorized trash hauler because such item was no longer operable. It is further understood and agreed that, for any and all property returned by NCDA, the Township shall make such property available for community events sponsored by the Township.
13. Entire Agreement. This Agreement, Resolution 1-20-2010 and Resolution 3-17-2010 embody the entire agreement and understanding of the parties relating to the subject

matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

14. Amendment. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto.
15. No Partnership or Joint Venture. Consistent with IRS regulations, nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto.
16. Assignment. This Agreement may not be assigned by either party hereto without the express written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.
17. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable. If for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other affect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.
18. Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other

documents and instruments to be executed and delivered in accordance herewith, and shall continue in full force and effect.

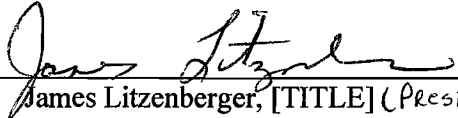
19. Construction. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania and the parties agree to submit to the jurisdiction of the Court of Common Pleas of Bucks County, Pennsylvania with respect to litigation arising out of this Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party, or each party had the opportunity to consult legal counsel, before the execution of this Agreement.
20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement.
21. Time. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty or obligation under this Agreement shall not be considered an extension of time for the performance of any other duty or obligation under this Agreement.
22. No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights

and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

23. Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.


IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have
duly executed this Agreement as of the day and year set forth above.

NOCKAMIXON COMMUNITY DAY ASSOCIATION, INC.

By: 
James Litzenberger, [TITLE] (President)

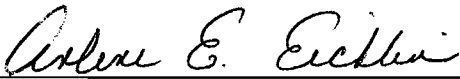
Date: 8/24/10

BOARD OF SUPERVISORS OF NOCKAMIXON TOWNSHIP

By: 
Nancy C. Janyszeski, Chair

Date: 8/18/2010

ATTEST:


Township Secretary

Date: 8/18/2010