

Town of Pendleton, New York
Facilities Usage Agreement

THIS AGREEMENT made this day ___ day of June 2023, by and between the TOWN OF PENDLETON, a Municipal Corporation having its principal offices at 6570 Campbell Boulevard, Lockport, New York [hereinafter referred to as "THE TOWN"], and the EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER [hereinafter referred to as "FOUR SEASONS"]., a New York corporation, having its principal offices and place of business at 1639 North French Road, Getzville, New York 14068

WHEREAS, the TOWN OF PENDLETON owns "Nine Mile Island", a location where a summer youth camp has operated for several years and the Town desires to continue such summer youth camp for the summer of 2023 and in particular the dates of July 5, 2023 through and including August 26, 2023,

WHEREAS, Nine Mile Island has been used by private organizations operating youth camps for more than seventy years;

WHEREAS, the need for summer youth camps and child care is great in the Town of Pendleton, the County of Niagara, and in the Western New York region, with such need exceeding the present availability of youth camps;

WHEREAS, FOUR SEASONS desires to continue such summer youth camp for the summer of 2023 and in particular the dates of July 5, 2023 through and including August 26, 2023,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

IT IS HEREBY AGREED that Four Seasons shall have access to and use of Nine Mile Island to operate a youth camp during the summer of 2023. This agreement sets forth the terms and conditions of such access and use of the property,

1. **TERM OF AGREEMENT** Four Seasons shall have access to NINE MILE ISLAND for the purposes of operating the youth camp from July 5, 2023 through August 24, 2023.
 - a. Prior to opening of the camp on July 5, 2023, Four Seasons shall clean the property [the main area of the island] at its own expense.
 - b. Such cleanup shall include removal of above ground pools and all supplies, chemicals, materials, parts and other pool related items associated with the operation of said swimming pools currently present on the property
 - c. Repair and/or tear down and remove the “pool house”, presently there is a hole in the roof of such structure.
 - d. Four Seasons and its contractors, agents, and designees shall have access to the property beginning June 12, 2023 to conduct clean up efforts and fulfill its obligations stated herein, as well as pursuant to the directions of the Niagara County Department of Health.
 - e. Four Seasons shall take the premises of NINE MILE ISLAND in its “as is” condition during the term of this agreement. All cleanup, maintenance and repairs shall be the obligation of Four Seasons.

2. **INDEMNIFICATION AND INSURANCE**

- a. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall provide the Town of Pendleton a complete roster of all children who shall participate in the Youth Camp program, including name, age and residence, by July 5, 2023.
- b. All such participants, or in the case of a minor the parent of such participant, shall sign the release which is attached hereto as **Schedule A** prior to participating in Youth Camp activities of EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER at NINE MILE ISLAND.
- c. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall obtain general liability insurance and shall name The Town of Pendleton as an additional insured on a primary and non-contributory basis. The amount of the insurance shall be an aggregate amount of \$2,000,000.00 with an upper Limit \$1,000,000.00 per occurrence.
- d. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTE will defend and indemnify the Town of Pendleton against any lawsuits or claims for injury to person

or property arising from EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER's use of the Property, as set forth in the indemnification agreement which is attached hereto as **Schedule A**.

3. Other than as set forth in this agreement, EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall have full control of the operations of the Youth Camp program as an independent contractor and shall have full authority to conduct programs, as determined by its governing body, without interference by the Town.
4. Neither party shall have liability for the acts or omissions of the other party or any of its officers, directors, employees, agents or other representatives.
5. Alcoholic beverages shall not be allowed upon NINE MILE ISLAND at anytime during the conduct of Youth Camp Activities or any other activities under the stewardship of EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER.
6. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall be responsible for refuse pick-up and dispose of it in proper containers after each game, practice or other event which it sponsors.
7. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall use reasonable efforts to control the conduct of Youth Camp participants and onlookers during usage of the Nine Mile Island and shall use reasonable efforts to not allow unruly behavior and shall, in all respects, conduct the Youth Camp activities to the benefit of the children and shall take all reasonably necessary steps to prevent abusive behavior by adults. Where necessary, EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER is authorized to exclude violators from present and future Youth Camp Activities . EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall have the exclusive right to determine who shall be excluded from NINE MILE ISLAND events.
8. This contract shall be governed by the Laws of the State of New York, Niagara County and/or its Department of Health and The Town of Pendleton.
9. This Agreement shall not be amended, changed or modified except by agreement in writing signed by both parties hereto.
10. This agreement constitutes the entire agreement between the parties regarding the subject matter herein and supersedes all prior and contemporaneous agreements,

understandings, negotiations and discussions between the parties, whether oral or written, with respect to such subject matter.

11. EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER shall comply with all laws, ordinances, and regulations applicable to its use of the Property.
12. All notices in connection with this contract shall be directed as follows:

To the Town:

Supervisor and Chairman of the Recreation Committee
6570 Campbell Boulevard
Lockport, New York 14094

To the EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER:

1639 North French Road
Getzville, New York 14068

13. This agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this agreement on and as of the date first set forth above.

TOWN OF PENDLETON

By: _____
Joel Maerten
Town Supervisor

EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER

By: _____
Margaret Blake
Peter Blake

SCHEDULE "A"
INDEMNIFICATION AND RELEASE FROM LIABILITY

Location of Event: NINE MILE ISLAND, Town of Pendleton, New York

Organizer: EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER [hereinafter referred to as "FOUR SEASONS"], a New York corporation, having its principal offices and place of Business at 1639 North French Road, Getzville, New York 14068

Activity Date: Operating a Youth Camp from July 5, 2023 through August 24, 2023

In consideration of participating in Summer Youth Camp Activities for the year 2023 an activity which will be conducted on Nine Mile Island, Town of Pendleton, New York during the summer of 2023, sponsored by EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER

and in consideration of the Town of Pendleton allowing EILMAR, INC. D/B/A FOUR SEASONS CHILD CARE CENTER to conduct such an event,

and in further consideration of the Town of Pendleton allowing individual children the opportunity to participate in said Youth Camp event on the property commonly known as NINE MILE ISLAND in the Town of Pendleton, New York,

the undersigned **Organizer and each individual youth participants**, hereby release the Town of Pendleton, along with their agents, officers, employees, members and any and all subordinate or affiliated organizations or persons sponsoring, hosting or associated with such activities, and any and all persons owning and controlling the real and personal property used or involved in such activities, of and from any liability, claims, damages, actions and causes of action whatsoever, arising out of or related to any loss, damage or injury, including death, that may be sustained by the undersigned, or to any property of the undersigned, while in or upon these premises owned and/or leased by the Town of Pendleton.

The undersigned, **Organizer and each individual youth participants**, being duly aware of the risks and hazards inherent in such Youth Camp activities, upon entering said premises and/or in participating in any Youth Camp activities held at NINE MILE ISLAND, hereby voluntarily elects to enter upon said premises and/or in participating in such Youth Camp activity, knowing the present condition and intended use of said premises and knowing that said condition and/or use may become more hazardous and dangerous during the time that the undersigned is upon the premises. The undersigned hereby voluntarily assumes all risks of loss, damage or injury, including death, that may be sustained by the undersigned, or to any property of the undersigned while in, or upon said premises and holds harmless the Town of Pendleton from all risks of loss, damage or injury, including death, that may be sustained upon said property when involved in such activities.

This release shall be binding upon the distributees, heirs, next-of-kin, executors and administrators of the undersigned.

In signing the foregoing release, the undersigned hereby acknowledges and represents that he/she has read the said release, understands it, and signs it voluntarily and that he/she is over the age of majority and not a minor, and is of sound mind.

