

CARNIVAL LICENSE AGREEMENT

THIS AGREEMENT to provide amusement rides and concessions (hereinafter the "Agreement") is made this ____ day of _____, 200__, by and between _____ (hereinafter the "Parish") and _____ (hereinafter the "Carnival Operator").

The purpose of this Agreement is to set forth the terms and conditions for the Carnival Operator to provide amusement rides for the Parish Carnival/Festival identified and known as _____ (hereinafter the "Event").

NOW THEREFORE, in consideration of the monies received pursuant to this Agreement and the mutual covenants hereinafter described, Parish and Carnival Operator agree as follows:

ARTICLE I - TERMS OF EVENT

1.1 Premises. Parish hereby grants to Carnival Operator, on a nonexclusive basis, the revocable license to use _____ (hereinafter the "Premises") located in the City of _____, County of _____, State of Florida, more particularly described as follows:

1.2 Term. The term of this Agreement shall begin _____, 200__, and end on _____, 200__. [The daily hours of operation may vary from day to day and will be set by Parish.]

- A) FOR THE PURPOSE OF **PRE-EVENT MOVE-IN**, Carnival Operator's license shall commence on _____, 200__, at ____ a.m./p.m.
- B) FOR THE PURPOSE OF **THE EVENT**, Carnival Operator's license shall commence on _____, 200__, at ____ a.m./p.m.
- C) **TERMINATION FOR THE PURPOSE OF THIS EVENT** is on _____, 200__, at ____ a.m./p.m.
- D) FOR THE PURPOSE OF **MOVE-OUT**, Carnival Operator's license shall end on _____, 200__, at ____ a.m./p.m.
- E) **MOVE-IN AND MOVE-OUT** must take place during the designated times stipulated in this Agreement.

Carnival Operator agrees to quit and surrender the Premises and all equipment therein to Parish at the end of the term of this Agreement in the same condition as the date of the commencement of this Agreement, ordinary use and wear thereof only excepted. Carnival Operator agrees to make only those alterations, additions, or improvements, in, to, or about Premises which have been approved in advance and in writing by Parish.

1.3 Revenue.

- A) Ride Tickets Revenue: The parties agree that revenues from ticket sales for amusement rides will be divided as follows:

	Carnival Operator	Parish
Pre-sale Rides	_____%	_____%
Armbands	_____%	_____%
During Event	_____%	_____%

- B) Parish reserves the right to sell food and/or drinks on the midway Yes No
- C) Parish: Games, Food, Etc. Parish shall receive 100% of all income generated by its own food booths, games, parking, or any other income source not specifically allocated in this agreement.

- D) Carnival Operator: Games and Concessions are permitted Yes No

If yes, then the parties agree that revenue from any Carnival Operator concessions, or games, of food, shall be allocated as follows:

Carnival Operator: _____% Parish _____%

1.4 Tickets.

- A) Carnival Operator shall supply sequentially numbered pre-sale ride ticket sheets no later than the following date: _____
- B) Carnival Operator will supply all ticket booths Yes No
- C) Parish will provide all ticket sellers and cash banks for ticket booths
Yes No

1.5 Advertising. Carnival Operator shall provide posters and/or signs for the advertisement of the festival, to be furnished to Parish no later than _____, to permit Parish to advertise and publicize the event.

ARTICLE II - OBLIGATIONS OF CARNIVAL OPERATOR

2.1 Amusement Rides and Concessions.

- A) Carnival Operator hereby agrees to furnish the following amusement rides and concessions:

- B) Carnival Operator may not furnish any other rides or concessions without the prior written consent of Parish.
- C) Carnival Operator agrees to furnish competent, qualified ride operators on each ride. It shall be the obligation of Carnival Operator that all personnel employed by Carnival Operator will be appropriately uniformed, will keep themselves in a neat and clean condition, will deal courteously with Parish staff and with patrons of the event, and will not use rough or profane language, drink alcoholic beverages or use non-prescription drugs at any time while on the Premises. Carnival Operator, upon request, will furnish a list, including names, date of birth and social security number of all personnel who will assemble, disassemble or operate the rides, and/or concession and games whether such request occurs before, during or after the event.
- D) Removal of Amusement Rides, Concessions and other Equipment Utilized by Carnival Operator on the Premises for the Event. Carnival Operator shall furnish, at its own expense, all personnel required to erect, operate, dismantle and remove all amusement rides and concessions and other equipment on the premises.

During the term of this Agreement, Carnival Operator shall erect and operate the aforementioned amusement rides and concessions with reasonable care. Carnival Operator will operate such rides as are provided for this Agreement on a daily basis for the period each day as set by Parish. Carnival Operator, its employees, associates, ride operators and agents, shall maintain and keep the premises, amusement rides, game booths and concessions in a reasonable safe condition and insure no unauthorized use of the same. Parish will have no responsibility for supervising the patrons of the rides, games and concessions of Carnival Operator, which supervision shall rest solely in the discretion of Carnival Operator. Carnival Operator may refuse admission to any ride, or participation in any game, in its sole discretion.

2.2 Carnival Operator Representative. At all times Carnival Operator or any of Carnival Operator’s personnel are present on the premises, there shall also be present a “Representative” of Carnival Operator who shall be responsible for Carnival Operator’s operations under this Agreement and the conduct of its personnel.

Name of Carnival Operator Representative _____
Telephone Number _____ Cell Phone _____
Address _____
E-Mail _____

2.3 Shows. Absolutely no shows of any type shall be permitted unless specifically approved by the Parish in writing.

2.4 License Agreement. Parish grants to Carnival Operator a license to use the Premises. Carnival Operator’s use of the Premises shall not constitute a tenancy of any kind, and this Agreement is not a lease. The parties further agree that Carnival Operator’s rights hereunder shall not be construed as an easement, or any other interest in real property.

2.5 Status of Name, Address, and Guaranty. The Carnival Operator represents and warrants that the legal name as contained in this Agreement along with all other information in this Agreement are accurate and correct in all respects and makes this warranty as of the date of this Agreement and continuing through its duration. Carnival Operator further represents and warrants that the representative who has signed the Agreement has full, complete and absolute authority to bind the Carnival Operator. If the Carnival Operator is a corporation, it warrants and represents that it is in good standing and active and, if it is not a Florida Corporation, it warrants and represents that it is authorized to do business in the State of Florida. Any change in the Carnival Operator’s legal name, fictitious or trade name, address, or telephone number shall be forwarded to the Parish as provided in the notice provision of this Agreement, in writing, within three (3) days after the change.

2.6 Rules and Regulations. Carnival Operator agrees to abide by and conform to all rules and regulations from time to time adopted or prescribed by Parish, for the governance and management of Premises. Further, Carnival Operator and/or all associates use of the premises is specifically limited to the area described in paragraph 1.1. All other areas of the parish and/or school shall be off-limits and shall remain secure at all times.

2.7 Alcoholic Beverages. Carnival Operator agrees to not cause or allow alcoholic beverages of any kind to be sold, given away, or consumed on the Premises except after obtaining the express written consent of Parish. In such event, Carnival Operator shall possess the necessary liquor license and permit.

2.8 Damage to Premises. Carnival Operator agrees to not injure, nor mar, nor destroy, nor alter, nor in any manner deface the Premises, any building, or any equipment contained therein, and to not cause or permit anything to be done whereby Premises or equipment therein shall be in any manner injured, marred, destroyed, altered or defaced; and to not drive or permit to be driven nails, hooks, tacks, screws or other such fasteners into any part of said building or equipment contained therein and to not make nor allow to be made any alterations of any kind to said building or equipment contained therein; that if said premises or any portion of said building or any equipment contained therein during the term of this Agreement shall be altered in any manner and/or damaged by the act, default or negligence of Carnival Operator, or of the Carnival Operator’s agents, employees, patrons, guests or of any person admitted to Premises, Carnival Operator shall cause Premises and/or equipment to be returned to their condition as existed upon the execution hereof. The Carnival Operator hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said Premises or to any portion of said building by the consent of the said Carnival Operator or by or with the consent of any person acting for or in behalf of said Carnival Operator.

2.9 Animals. Carnival Operator shall not allow any of its employees, agents or any person associated with Carnival Operator to bring, or keep on the Parish's premises, any animals whatsoever, without the prior written consent of Parish. If such consent is given, Carnival Operator agrees that all animals shall be kept on a leash at all times and agrees to clean up and dispose of all waste. Carnival Operator shall be solely responsible for the acts and conduct of all such animals.

2.10 Ordinances, Statutes, License and Permits. Carnival Operator shall:

- A) Comply and shall require its employees to comply with all laws, ordinances and regulations adopted or established by Federal, State or Local Governmental agencies or bodies, within the terms of this Agreement, all relevant health and fire codes and all trademark, copyright and other intellectual property laws. Carnival Operator agrees that at all times it will conduct its activities with full regard for public safety. Carnival Operator also shall not use, store or permit to be used or stored in or on any part of Premises covered by this Agreement any substance or item prohibited by law, ordinance or standard policies of fire insurance companies operating or insuring in the State of Florida.
- B) Obtain and pay for all Federal, State, County and other licenses, permits and inspections that may be required to operate their amusement rides and concessions and, furthermore, Carnival Operator shall provide proof to Parish that all appropriate licenses, permits and inspections have been obtained. The Parish agrees to cooperate in obtaining necessary licenses and permits.
- C) Safety Standards. Carnival Operator agrees to comply with any safety standards expressed in Florida Statutes or the rules promulgated thereby or required by the Commissioner of Agriculture and to operate all rides and amusement devices according to the safety standards, rules and regulations therein prescribed and any other safety standards including the County's in which the Premises are located which may be applicable and to furnish Parish with all safety inspection forms and reports as may be required.

2.11 Insurance. The Carnival Operator, at its cost, shall provide the following forms of insurance:

- A) Commercial General Liability including coverage for Bodily Injury, Death, Property Damage, Contractual Liability, Personal Injury - encompassing libel, slander, false arrest, malicious prosecution, wrongful entry or eviction, advertisers liability, including violation of Trademark or copyright and discrimination.
- B) In the event that any liquor is being sold, the policy shall include liquor liability coverage. If liquor is provided at no charge, the policy shall include host liquor liability coverage.
- C) The minimum limits acceptable for General liability are \$1,000,000 per occurrence and \$3,000,000 annual aggregate. Such coverage shall be effective for a period of time during the Term of this Agreement.
- D) Automobile Insurance policy providing coverage of not less than \$1,000,000 combined single limit for bodily injury and property damage for at least all owned, non-owned and hired vehicles.
- E) Statutory Worker's Compensation Insurance as well as Employer's liability with limits of not less than \$500,000 per occurrence and shall indemnify and hold harmless the Parish for any and all claims arising from the Carnival Operator's employees.

Such policy(ies) will contain the provision that the Parish is an additional insured and that "coverage provided herewith shall be primary over any other insurance or self-insurance program available to the Parish for any liabilities arising in connection with this Agreement."

All insurance shall be placed with companies approved to do business in the State of Florida which shall have an AM Best rating at least an "A," and Financial Category of at least "VII." The Carnival Operator shall furnish the Parish with an originally signed Certificate of Insurance clearly demonstrating the above coverage requirements. Such certificate shall indicate not less than 30 days advance notice shall be provided to the Parish prior to cancellation, expiration or material alteration of any policy of insurance covered by this Agreement within 30 days of such policy being issued. Should said insurance fail to provide a defense to Parish within ten (10) days

of receiving Notice of Claim, irrespective of any rights of Parish hereunder, Carnival Operator agrees to pay all of Parish's attorneys' fees and costs together with liquidated damages of One Hundred and No Cents (\$100.00) Dollars, per day.

2.12 Underground Utilities. Carnival Operator shall not, nor will Carnival Operator allow any of its agents or employees to drive any stake, instrument or object of any kind into the asphalt or grassy area of Premises without the written consent of Parish. It shall be the sole responsibility of the Carnival Operator to enforce this provision and should any damages occur Parish will look to Carnival Operator for reimbursement.

2.13 Storage. Carnival Operator assumes all responsibility for all goods, materials, exhibits, displays, articles and other tangible personal property in or on the Premises before, during or after the event and Parish assumes no responsibility for said items. Carnival Operator agrees to assume all risk or loss of said property and will defend, indemnify and hold Parish harmless from any and all loss.

ARTICLE III - OBLIGATIONS OF PARISH

3.1 Warranties by the Parish. It is further expressly understood and agreed by and between the parties hereto that this Agreement does not contain or embody, and shall not be construed to contain or embody any implied covenant, warranty or agreement on the part of the Parish, and there are no verbal agreements whatsoever between the Parish and Carnival Operator, and no agreements nor covenants exist between them except those representations, warranties and agreements expressed in writing in this instrument.

3.2 Cancellation. Parish reserves the unilateral right to cancel this Agreement for the public good in the Event of an act of God, inclement weather, natural disaster, bomb or threat or for other reasons as determined in the sole and arbitrary opinion of Parish, or in the event of any request by and Federal, State or County agency for use of the Premises under such circumstances, it being understood and agreed by Carnival Operator that its rights hereunder are subordinate and inferior to the right of use by any Federal, State or County agency or department. Should the Parish exercise its rights to cancel this License, Carnival Operator agrees to forego any and all claims for damages or losses against the Carnival Operator and further agrees to waive any and all rights which might arise by reason of the terms of this agreement and the Carnival Operator shall have no recourse of any kind against Parish.

3.3 Removal of Objectionable Amusement Rides. If, in the Parish's opinion, any and/or all rides, persons, games, concessions, events, or any other activity of Carnival Operator are detrimental to the public morals or which would adversely reflect on the Parish, then the Parish shall have the sole and complete discretion to have removed from the Premises, or not permit within Premises, any and all such rides, persons, games, concessions or events under the employ of or under contract with the Carnival Operator or any other activity of Carnival Operator. Should Parish exercise its rights hereof, Carnival Operator agrees to forego any and all claims for damages against Parish as a result of Parish's actions.

3.4 Default. If Carnival Operator fails to abide by and perform all covenants, stipulations and conditions of this Agreement, Parish may, at its option, immediately terminate and end this Agreement and the license hereby granted, and all rights and interest of the Carnival Operator thereunder forthwith.

3.5 Utilities. Parish agrees to provide a minimum of one water connection for use by Carnival Operator. Parish will also provide at least one portable restroom commencing on the date of the pre-event move in set forth in paragraph 1.2, and additional portable restrooms sufficient for the dates of the event.

3.6 Waiver. The failure of Parish to insist on the strict performance of any one or more of the covenants, terms and conditions of this Agreement, shall not be construed as a waiver of such covenants, terms or conditions, but the same shall continue in full force and effect, and that no waiver by Parish of any of the provisions hereof shall in any event be deemed to have been made unless the same be expressed in writing by Parish.

ARTICLE IV - MISCELLANEOUS TERMS

4.1 Assignment and Sublicensing. This Agreement is personal between Parish and Carnival Operator. Carnival Operator shall not assign any portion of this Agreement or sublicense any portion of Premises or assign responsibility for provision of amusement rides and concessions without the express written consent of Parish.

4.2 Entry and Inspection. Carnival Operator's use of Premises is nonexclusive, and Parish may enter at any time and for any purpose while Carnival Operator is utilizing Premises or at any other time.

4.3 Liability/Indemnification of the Parish. It is expressly understood and agreed by and between the parties hereto that in no case shall the Parish be liable to the Carnival Operator, or any other person or persons, for any injury, loss and/or damage to any person or property on the Premises or on the amusement rides provided by the Carnival Operator or by virtue of any act, error, or omission of Carnival Operator, whether same is caused by or results from the carelessness, negligence, or improper conduct of the Carnival Operator, its agents or employees or otherwise, said Carnival Operator hereby taking all risk and indemnifying Parish for any such damage or injury. Carnival Operator agrees to hold Parish harmless from any claims for damages, caused by the act, error, or omission of Carnival Operator, its agents, employees, assigns, invitees or otherwise regardless of whether the claim for damages arises out of an occurrence occurring before, during, or after the time set forth in this Agreement for providing amusement rides and concessions. This provision shall survive the termination of the Agreement. In the event the Parish shall be made a party to any litigation against Carnival Operator or in any litigation commenced by a party against any other party other than Carnival Operator relating to the use of the premises for the event, then Carnival Operator shall and will pay all costs and expenses, including reasonable attorney fees and court costs, incurred by or imposed upon Parish by virtue of any such litigation.

4.4 Independence of Carnival Operator. It is expressly understood and agreed by and between the parties hereto that Carnival Operator is not owned, operated, sponsored, affiliated, or otherwise under the direction or control of Parish. Parish has no authority or control over any aspect of Carnival Operator's operations, except as provided in this Agreement. Carnival Operator is an entity entirely independent of Parish related only by the independent contractual terms of this Agreement. Carnival Operator specifically agrees to exonerate, indemnify and hold Parish harmless from and against, and shall assume full responsibility for payment of, all Federal, State and local taxes or contributions imposed or inquired under unemployment insurance, social security and income tax laws with respect to Contractor's employees engaged in the performance of this Contract.

4.5 Carnival Operator Failure to Appear. Should the Carnival Operator fail to timely appear and set up for the event or fail to perform the conditions and requirements set forth in the Agreement, this Agreement shall be canceled and shall in all respects be deemed null and void, and Parish shall be entitled to Fifty Thousand and No Cents (\$50,000.00) Dollars from Carnival Operator as agreed upon liquidated damages and not as penalty, it being understood and agreed by all parties that actual damages would be extremely difficult to ascertain. Furthermore, should the Carnival Operator default in the performance of any of the terms and conditions of this Agreement, Parish, at its option, may cancel this Agreement and the relation of the parties shall be in all respects as if said terms had fully expired. Should Parish exercise its rights to cancel this Agreement, Carnival Operator agrees to forego any and all claims for damages against Parish and further agrees to waive any and all rights which might arise by reason of this Agreement and the Carnival Operator shall have no recourse of any kind against Parish and the relation of the parties shall be in all respects as if said terms had fully expired. Additionally, Carnival Operator hereby waives any and all claims for compensation for any and all loss or damage sustained by reasons or any defect, deficiency or impairment of the premises including, but not limited to electrical, telephone, plumbing, sewer and water or any part thereof furnished by Parish.

4.6 Electrical Equipment. Carnival Operator shall furnish sufficient electrical generating equipment for all rides at no charge to the Parish. All electrical cables exposed to the public shall be covered or labeled in bright colors and shall otherwise comply with all Fire Marshal standards.

Parish agrees to provide electrical service to Carnival Operator where available
_____ Yes _____ No

If Yes, Carnival Operator agrees to reimburse Parish for such direct electrical cost at the conclusion of Event _____ Yes _____ No

If Yes, specify method of reimbursement _____

Other Terms concerning electrical equipment: _____

4.7 Notices.

- A) Any notice which either party may or is required to give, shall be given in writing and shall be given by mailing the same, postage prepaid, to Carnival Operator at the address shown below or Parish at the address shown below, or at such other places as may be designated by the parties from time to time.

Carnival Operator:

Parish:

- B) Method of Giving Notice. All notices or other communications permitted or required to be given under this License shall be given in writing, and delivered to Parish or to the Carnival Operator in one of the following ways, at the option of the party giving the notice: (i) by hand delivery; (ii) by certified or registered mail, return receipt requested and proper postage prepaid; (iii) by a nationally recognized overnight courier service such as Federal Express; or (iv) by telecopy.
- C) Effective Date of Notices. Notices delivered by hand delivery or by a nationally recognized overnight mail service shall be effective on the date delivered to the recipient. Notices delivered by certified or registered mail shall be effective upon receipt, or three (3) business days after deposit in the United States mails, whichever shall first occur. Notices sent by telecopy shall be effective on the date transmitted and received, provided that the receipt occurs prior to 5:00 p.m. eastern standard time.

4.8 Applicable Law and Venue. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of Florida and no other.

The venue of any legal proceeding brought in connection with this Agreement shall be in Pinellas County, Florida.

4.9 Time. **TIME IS OF THE ESSENCE** of all of the provisions and terms of this Agreement.

4.10 Pre-suit Mediation. Prior to bringing any lawsuit under this Agreement, the parties hereto agree to submit any and all disputes to pre-suit mediation under the Florida Rules of Civil Procedure. Accordingly, the parties agree to strictly follow said rules and abide by any agreement made as the result of mediation. Good faith compliance with this provision shall be a condition precedent to the right of any party hereto to bring a lawsuit under this Agreement. This provision is a material inducement to the Parish entering into this Agreement. This provision shall survive termination of this Agreement.

4.11 Termination. Parish reserves the right to cancel this Agreement at any time without cause upon sixty (60) days advance notice or immediately if for cause as determined by Parish in its sole discretion.

4.12 Miscellaneous Provisions.

- A) Severability and Enforceability. The terms of this Agreement are severable, and in the event that any specific term herein is determined to be unenforceable the remainder of the Agreement shall remain in full force and effect.
- B) Attorney's Fees. In the event it becomes necessary for any party hereto to institute litigation in order to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to all costs incurred therein, including reasonable attorneys' fees.
- C) Matters That Survive Terminations. Unless otherwise provided in this Agreement, all of the terms, provisions, representations and warranties, all remedies available to any party, shall survive termination of the Agreement.

- D) Entire Agreement. The foregoing constitutes the entire Agreement between the parties and may be modified only by a writing signed by both parties. Any and all prior agreements, understandings, and representation are hereby terminated and canceled in their entirety and are of no further force or effect.

- E) Construction of Agreement. Each party has relied upon its own examination of this License and the advice of its own counsel and other advisors in connection with this Agreement. This Agreement was negotiated at arm's length. Carnival Operator and Parish agree to the terms of the Agreement and have executed this Agreement freely and voluntarily. Thus, this Agreement shall not be construed more strictly against the Parish notwithstanding that it has been drafted by the Parish and the Parish's counsel. Furthermore, the money, property, insurance or services which are the subject of this Agreement are for commercial purposes and not for personal, family or household purposes.

- F) Paragraph Headings. The paragraph headings used in this Agreement are for convenience only, and shall not be used in interpreting or construing any provision of this Agreement.

- G) Other Conditions. It is mutually agreed that any and all matters not expressly provided for in this License will be at the sole discretion of Parish.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witnesses:

Parish: _____

 By: _____
 Print Name and Title: _____

Carnival Operator:

By: _____
 Print Name and Title: _____