

**CARNIVAL AGREEMENT**

**THIS AGREEMENT** to provide amusement rides and concessions (hereinafter the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Archdiocese of Miami, Inc., including \_\_\_\_\_ Church (hereinafter the "Parish"), and \_\_\_\_\_ (hereinafter the "Carnival Operator").

The purpose of this Agreement is for Carnival Operator to provide rides for \_\_\_\_\_ (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:

Section 1. Premises. Parish hereby grants to Carnival Operator, on a non-exclusive basis, the revocable privilege to use \_\_\_\_\_ (hereinafter the "Premises") located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Florida, more particularly described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 2. Term. The term of this Agreement shall begin \_\_\_\_\_, 20\_\_\_, and end on \_\_\_\_\_, 20\_\_\_. [The daily hours of operation may vary from day to day and will be set by Parish.]

2.1 **FOR THE PURPOSE OF PRE-EVENT MOVE-IN**, Carnival Operator's use of the aforementioned premises shall commence on \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ a.m./p.m.

2.2 **FOR THE PURPOSE OF THE EVENT**, Carnival Operator's use of premises shall commence on \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ a.m./p.m.

2.3 **AND SHALL TERMINATE FOR THE** purpose of the EVENT on \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ a.m./p.m.

2.4 **FOR THE PURPOSE OF MOVE-OUT**, Carnival Operator's use of premises shall end on \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ a.m./p.m.

2.5 **MOVE-IN AND MOVE-OUT** must take place during the designated times stipulated in this Agreement.

Section 3. Amusement Rides and Concessions. Carnival Operator hereby agrees to furnish the following amusement rides and concessions:

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Carnival Operator may not furnish any other rides or concessions without the prior written consent of Parish.

Section 4. Ticket Sale Revenue. Parish and Carnival Operator hereby agree that revenues from ticket sale for amusement rides and concessions will be divided as follows:

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In addition, Carnival Operator agrees to pay Parish the following:

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Section 5. 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.

Section 6. Shows. Absolutely no shows of any type shall be permitted unless specifically approved by the parish in writing.

Section 7. No Interest in Property. 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.

Section 8. Operation of Amusement Rides and Concessions. During the term of this Agreement, Carnival Operator shall erect and operate the aforementioned amusement rides and concessions. 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.

Section 9. Parish Ownership of Premises. Parish covenants that it is the owner of the Premises and that said Premises are to the best knowledge and belief of Parish in good repair and suitable for Carnival Operator's purposes described herein. Carnival

Operator agrees to restrict its use to the furnishing of the aforementioned amusement rides and concessions, and not to use, or permit the use of, the Premises for any other purpose without first obtaining the express written consent of the Parish.

Section 10. 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.

Section 11. Condition of Premises. 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.

Section 12. 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.

Section 13. Alcoholic Beverages. Carnival Operator agrees to not cause or allow alcoholic beverages of any kind to be sold, given away, or used upon Premises except after obtaining the express written consent of Parish. In such event, Carnival Operator shall possess the necessary liquor license and permit.

Section 14. Improvements. 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.

Section 15. Damage to Premises. Carnival Operator agrees to not injure, nor mar, nor in any manner deface Premises 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 or defaced; and to not drive or permit to be driven nails, hooks, tacks or screws 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.

Section 16. Ride Operators. Carnival Operator agrees to furnish competent, qualified ride operators on each ride.

Section 17. Dogs. 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 dogs.

Section 18. Tickets. Carnival Operator agrees to provide ticket sellers and change for ride ticket booths as well as the actual tickets for amusement rides and concession unless the Parish provides written notice to the contrary.

Section 19. Removal of Amusement Rides and Concessions. 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.

Section 20. Ordinances and Statutes. Carnival Operator shall 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, with 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.

Section 21. Licenses and Permits. It shall be the full and sole responsibility of Carnival Operator to 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.

Section 22. 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.

Section 23. Entry and Inspection. Carnival Operator's use of Premises is non-exclusive, and Parish may enter at any time and for any purpose while Carnival Operator is utilizing Premises or at any other time.

Section 24. 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.

Section 25. 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.

Section 26. 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.

Section 27. Insurance. The Carnival Operator, at its cost, shall provide the following forms of insurance: Commercial General Liability including coverage for Bodily Injury; Property Damage; Contractual Liability; and Personal Injury - encompassing libel, slander, false arrest, malicious prosecution, wrongful entry or eviction, advertisers liability, including violation of Trademark or copyright and discrimination.

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.

Such policy 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.

The minimum limits acceptable for General liability are \$1,000,000 per occurrence and \$3,000,000 annual aggregate.

In addition, the Carnival Operator shall have an 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.

Carnival Operator shall also have 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.

All insurance shall be placed with companies approved to do business in the State of Florida which shall have an AM Best rating of 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 that 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. The Parish is entitled to receive a copy 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.

Section 28. 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.

Section 29. 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.

Section 30. 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 Counties 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.

Section 31. Personnel. 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 patrons of Parish, 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, whether such request occurs before, during or after the event.

Section 32. Screening Requirements. Carnival Operator acknowledges and agrees that Parish is committed to insuring the safety and well-being of its students, children, and youth, its elderly and aged, and its disabled, and condemns all forms of abuse or neglect of people of all ages. Carnival Operator represents and warrants that all persons affiliated or associated with Carnival Operator, whether by employment, independent contractor, volunteer, invitation, or any other status, who have access to the Premises by virtue of this Agreement, shall meet the minimum level 2 screening requirements of Section 1012.465, Florida Statutes, and Carnival Operator shall perform all necessary background investigations to ensure such compliance. If at any time Parish is not satisfied that this requirement has been met for any person affiliated with Carnival Operator, or for any reason in its sole discretion, with or without cause, Parish may request that Carnival Operator or any person affiliated with Carnival Operator be prohibited from accessing the Premises, and Carnival Operator shall immediately vacate the Premises or prohibit such person identified by Parish from accessing the Premises, as Parish may direct. It is expressly understood and agreed that Carnival Operator shall be strictly liable for any injury, loss and/or damage to any person, and shall indemnify and hold Parish harmless from any claims, resulting from Carnival Operator's failure to comply with the requirements stated herein. Parish shall not be liable for any termination fees or damages (direct, indirect or consequential) as a result of enforcing this Section.

Section 33. 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 any 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 against the Carnival Operator and further agrees to waive any and all rights which might arise by reason of the terms of this License and the Carnival Operator shall have no recourse of any kind against Parish.

Section 34. 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.

Section 35. Toxic Waste. Carnival Operator agrees, at all material times Carnival Operator is on the Premises, not to have in its possession, collect, distribute, dispose, release or otherwise discharge any toxic or hazardous waste as defined by Florida and Federal law.

Section 36. Electrical Equipment. Carnival Operator shall furnish sufficient electrical generating equipment for all rides at no charge to the Parish. Parish agrees to provide electrical service to Carnival Operator where available. Carnival Operator agrees to reimburse Parish for such direct electrical use cost, at the conclusion of the Event.

Section 37. Nuisance. Carnival Operator shall not use the Premises for any unlawful purpose or in any way which will constitute a nuisance or interfere with Parish's use of the Premises.

Section 38. Removal of Objectionable Amusement Rides. Parish shall have complete discretion to remove from the Premises, or not permit within Premises, any and all rides, persons or events under the employment of or under contract with Carnival Operator or any other activity of Carnival Operator which in his opinion are detrimental to the public morals or which would adversely reflect on Parish. 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.

Section 39. 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.

Section 40. Notices. 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 Parish at the address shown below or Carnival Operator at the address shown below, or at such other places as may be designated by the parties from time to time.

Parish:

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Carnival Operator:

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Section 41. 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 facsimile.

Section 42. Effective Date of Notices. Notices delivered by hand delivery or by a nationally recognized overnight courier service such as Federal Express 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 mail, whichever shall first occur. Notices sent by facsimile shall be effective on the date transmitted and received, provided that the receipt occurs prior to 5:00 p.m. eastern standard time.

Section 43. Venue. The venue of any legal proceeding brought in connection with this Agreement shall be in \_\_\_\_\_ County, Florida.

Section 44. Applicable Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of Florida and no other.

Section 45. Time. Time is of the essence of all of the provisions and terms of this Agreement.

Section 46. Waiver of Trial by Jury. Parish and Carnival Operator hereby mutually, knowingly, willingly and voluntarily waive their right to a trial by jury and no party nor any assignee, successor, heir, or legal representative of the parties (all of whom are collectively

referred to below as the "parties") shall seek a jury trial in any suit, proceeding, counterclaim, or any other litigation or proceeding based upon or arising out of this Agreement or any related agreement or instrument, or any course of action, course of dealing, statements, (whether verbal or written) or actions relating to this Agreement, including any tort claim or claims for fraud, misrepresentation, breach of fiduciary, antitrust, etc. The parties also waive any rights to consolidate any action in which a jury trial has not been waived. The provisions of this paragraph have been fully negotiated by the parties, and the parties acknowledge that the inclusion of this provision is a material inducement for entering into this Agreement. The waiver contained in this paragraph is irrevocable, constitutes a knowing and voluntary waiver, and shall be subject to no exceptions.

Section 47. 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

Section 48. 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.

Section 49. 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.

Section 50. 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.

Section 51. Matters That Survive Terminations. Unless otherwise provided in this Agreement, all of the terms, provisions, representations and warranties, and all remedies available to any party shall survive termination of the Agreement.

Section 52. 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.

Section 53. 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.

Section 54. 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.

Section 55. 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.

Section 56. 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: Archdiocese of Miami, Inc.

Including Parish:

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By: \_\_\_\_\_

Print name and title: \_\_\_\_\_

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\_\_\_\_\_

Carnival Operator:

By: \_\_\_\_\_

Print name and title: \_\_\_\_\_

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