

## **Kennywood Volunteer Charity Services Agreement**

This Volunteers Charity Services Agreement (“Agreement”) is made as of \_\_\_\_\_, 2011, by and between Festival Fun Parks, LLC dba Kennywood (“Kennywood”) and \_\_\_\_\_, a bona fide tax-exempt, non-profit, charitable organization existing pursuant to Section 501(c)(3) of the Internal Revenue Code (the “Charity”).

*Whereas*, Charity desires to raise money by providing volunteers to assist with special events at Kennywood, in exchange for Kennywood making a donation to Charity,

*Now, therefore*, intending to be legally bound hereby, the parties hereto agree as follows:

- I. **Scope of Volunteer Services.**
  - a. **Type of Services:** Kennywood will provide Charity with a list and description of services it needs performed relating to one or more special park events. Kennywood will specify special job requirements (if any), or if special strength or skills are needed; however, it is understood that the vast majority of positions will be non or semi-skilled and will relate to the preparation and operation of Kennywood in September and October. Volunteers must be at least eighteen (18) years of age and have the legal right to be present in, and to work in, the United States of America (Charity is solely responsible for determining and verifying age and legal status requirements; Kennywood will take no action to verify ages or legal status of the volunteers). Kennywood shall at all times maintain the right to exclude and remove any volunteer, at any time, for any reason in its sole and absolute discretion.
  - b. **Dates and Times:** Kennywood will state the dates and times when it needs volunteers to assist with park-related events, and Charity shall strive in good faith to provide the needed volunteers for such dates and times.
  - c. **Exhibit A Requirement - Volunteers are NOT Employees:** Charity shall have all of its volunteers execute the disclaimer attached hereto as Exhibit A, whereby the volunteers agree that they are not and will not be employed by Kennywood and will accordingly not receive any compensation or other benefits for their services whatsoever.
  - d. **Tax ID & W-9 Required:** Charity must provide a bona fide and true Tax ID for its charitable group, and a W-9 before any donation will be made. If there is any reasonable, good faith basis for Kennywood to believe that Charity has falsified a Tax ID or W-9, or misrepresented its “charitable” status, this shall be deemed a fraud upon Kennywood and possible attempt to commit a fraud upon all applicable taxing authorities, and accordingly, this Agreement will terminate immediately upon notice by Kennywood without any liability or obligation whatsoever by Kennywood, and no donation will be made.
  - e. **Donation for Volunteered Services:** Kennywood will in good faith keep track of the hours worked by Charity’s volunteers (to the extent each volunteer properly checks in and out, as instructed) and will make a voluntary donation to Charity in an amount equal to \$7.25 per hour for every volunteer hour provided (rounded to the nearest quarter hour). The donation may be made at the end of each month where volunteer services were provided, or within thirty (30) days at the end of a specific project (e.g., “Fright Nights”), in Kennywood’s sole discretion.
  - f. **Best Interests/Reputation & Following Park Rules:** Charity and its volunteers shall at all times act in good faith and in the best interests of Kennywood, and shall in no event disparage or defame Kennywood (including without limitation its personnel, services, attractions, food, employees, customers, owners), or place Kennywood in a false or negative light. In addition to its

general right to eject any volunteer at any time for any reason, Kennywood may eject volunteers or the entire Charity for any political activities or demonstrations in or around Kennywood, commercial activities, nudity, sexual activities on premises, inappropriate dress or tattoos, accessing of off-limit areas, weapons or fireworks possession, violence or threatened violence, or for anything which is (in Kennywood's sole discretion) generally disruptive or offensive to other guests and their enjoyment of the park, and/or to the park's positive, family-friendly environment, or which may threaten the health or safety of people or damage to property, or for any breaches of security and safety procedures and rules.

- g. **No Alcohol or Drugs:** There is a strict NO alcohol or drugs policy at Kennywood for all volunteers. Charity shall ensure that it and its volunteers do not bring alcohol or drugs onto the premises. Volunteers may be immediately ejected for violation of this rule, the alcohol and/or drugs confiscated, and if appropriate, a volunteer may be held by security while authorities are contacted.

II. **No Employment Relationship.**

- a. Charity understands, acknowledges and agrees that it, nor any of the volunteers it provides, have or will have any employment relationship with Kennywood (whether by contract, implication, operation of law, or otherwise). Accordingly, Charity and its volunteers shall not be entitled to any compensation whatsoever, including without limitation, benefits, compensation, shares of stock, unemployment insurance, fringe benefits, rights to access Kennywood, etc., nor are volunteers entitled to coverage under Kennywood's insurance policies, including without limitation workers' compensation.
- b. Neither Charity nor its volunteers will have the express or implied right or authority to assume or create any obligation on behalf of or in the name of Kennywood, or to bind Kennywood in regard to any contract, agreement or undertaking with any third party. At no time will Charity or its volunteers hold itself out to be the agent, employee, lessee, sublessee, partner or joint venturer of Kennywood.

- III. **Insurance.** Kennywood will maintain general liability insurance, in limits it determines in its sole discretion, covering volunteers as invitees to the park property only. Kennywood shall have no liability or responsibility for having any other form or type of insurance coverage for Charity's or volunteers' benefit whatsoever. Charity agrees to provide for and be solely responsible and liable for any workers' compensation or other insurance it may deem advisable or necessary to cover any claims that might be brought against it (including without limitation for the negligence, illegality, criminal acts, or willful misconduct of one or more volunteers), or for any harm which may be caused to Charity and/or any of its volunteers while providing the services and while on Kennywood property.

IV. **Indemnification.**

- a. Charity shall indemnify, defend and hold harmless Kennywood (including Kennywood's partners, suppliers, affiliates, directors, officers and employees) from and against all claims, demands, liabilities, losses, legal actions, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from or related to the acts or omissions of Charity and/or any of its volunteers or the services provided hereunder, including without limitation: (i) breach of this Agreement by Charity or a volunteer; (ii) Charity or a volunteer's infringement of another's intellectual property rights (including patent, trademark and copyright claims); (iii) Charity's or a volunteer's act of defamation, or violation of the publicity or privacy rights of another; (iv) Charity's or a volunteer's negligence, illegality, criminal conduct, or willful misconduct, including without limitation any personal injury or property damage or theft or sexual misconduct; (v)

violation of any child labor laws (Charity is solely responsible and liable for verifying that each volunteer is at least 18 years of age); (vi) violation of illegal immigration laws; (vii) failure to get Exhibit A hereto signed by each and every one of the volunteers, including any claims of duress or forgery in signing such form; (viii) discrimination and harassment claims by one or more volunteers.

- b. Charity and volunteers shall not look to Kennywood for any costs or expenses Charity may incur relating to any claim, action or proceeding from any party or entity, in any way relating to this Agreement, and are expressly prohibited from seeking indemnification or contribution from Kennywood or from instituting collection proceedings against Kennywood or from collecting against Kennywood, or seeking or filing any liens or other encumbrances or equitable remedies, all of which are hereby waived by Charity.
- c. Charity and the volunteers shall make no claim, and hereby waive any such rights, related to the donation to be made hereunder. Kennywood will make a donation in good faith, but does not make any representations, warranties or guaranties of any kind whatsoever related to the donation accuracy or amount.
- d. In the event that the Internal Revenue Service and/or any state or local governmental agency which administers the collection of any employment tax or contributions should classify Charity or any of its volunteers as an employee of Kennywood, then Charity shall hold Kennywood harmless from all liability for (i) failure to withhold federal, state and/or local income tax from Charity or the applicable volunteer(s)' compensation, and (ii) failure to withhold any other tax imposed on employees from Charity or volunteer(s)' compensation (including, but not limited to, FICA taxes on employees imposed by Section 3101 of the Internal Revenue Code of 1986, as amended, and worker contributions required under Pennsylvania state law), all of which shall be the sole responsibility and liability of Charity.

V. **Warranties, Guarantees and Representations.**

- a. Warranty, Guarantee and Representation by Charity: Charity, on behalf of itself and its volunteers, warrants, guarantees and represents, that all donation money realized from this Agreement will be used 100% for legitimate charitable purposes in accordance with Section 501(c)(3) of the Internal Revenue Code, and further, that it is a bona fide tax-exempt, non-profit, charitable organization existing pursuant to Section 501(c)(3) of the Internal Revenue Code.
- b. Disclaimer of All Warranties, Guarantees and Representations by Kennywood: KENNYWOOD MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES, REPRESENTATIONS REGARDING FUTURE EMPLOYMENT POSSIBILITIES OF VOLUNTEERS, THE QUALITY, ENJOYMENT OR INTEREST LEVEL OF THE VOLUNTEER SERVICES, GUARANTEES REGARDING HOURS, TIMES, DATES, OR LENGTH OF THE VOLUNTEER POSSIBILITIES, OR THE DONATION AMOUNT WHICH MIGHT BE REALIZED. AND KENNYWOOD SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED.

- VI. **Limitations of Liability.** In no event shall Kennywood (including any of its parks, affiliates, parents, employees, representatives, agents, shareholders, owners, suppliers, contractors, vendors, officers or directors) be liable for anything other than direct damages that it proximately causes (and only to the extent thereof) as a result of its gross negligence or willful misconduct, including without limitation for consequential, incidental, indirect, punitive or special damages, or expectation damages related to the donation, however caused,

including without limitation for breach of representation or warranty, breach or repudiation of contract, detrimental reliance, tort, strict liability, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

VII.

**Misc. Legal.**

- a. No Beneficiaries: This Agreement does not, and is not intended to, confer any rights and/or remedies upon any third party (person, business entity, educational institution, or otherwise) other than Charity and Kennywood, except that this Agreement shall inure to the benefit of all Kennywood affiliates and parent companies (including their owners, shareholders, officers, directors, employees, vendors, suppliers, representatives, attorneys, and consultants), and the same shall enjoy and benefit from all protections, limitations of liabilities, and indemnification protections, and all other benefits hereunder whether express or implied, all of which shall be deemed to automatically apply to the aforementioned related Kennywood entities and people.
- b. Termination Rights: Each party has the right to discontinue the relationship contemplated by this Agreement at any time (subject to Kennywood's donation for hours actually worked up to such time), but Charity shall not terminate without giving Kennywood as much advance notice as possible, acknowledging that Kennywood must plan for labor accordingly.
- c. Trademarks & Press:
  - i. "Kennywood," including without limitation all related logos and the Kennywood arrow, are trademarks wholly owned by Kennywood. Nothing shall confer any ongoing or perpetual license or other right to use such trademarks and nothing shall confer any ownership interest in or to such trademarks whatsoever, including without limitation rights to advertise/market, or print logos and names on t-shirts and other merchandise. In no event shall Kennywood be deemed to have conferred any right in or to any of its trademarks except as expressly agreed to in writing, in each instance.
  - ii. Charity shall not make any comments to the press or media, or publicize this Agreement or its volunteer services, in any form or through any means whatsoever. Press releases and marketing materials must be approved of in advance by Kennywood.
- d. Non-Waiver: No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party to this Agreement shall give the other party any contractual right by custom, estoppel, or otherwise.
- e. Non-Assignment: Neither party may assign this Agreement in whole or in part, and Charity may not transfer this Agreement in whole or in part, nor delegate any part of this Agreement, except for the provision of volunteers to perform the services.
- f. Integration: This Agreement constitutes the complete, exclusive, and final agreement between the parties with respect to the subject matter herein. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, promise, or agreement of the other party, and there are no conditions precedent to the effectiveness of this Agreement, other than as expressly stated herein. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or prior course of dealings, and no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement. Any amendment or modification to this Agreement must be in writing and signed by the parties hereto.

- g. Severability: If any provision of this Agreement is held to be invalid, illegal or unenforceable, then the remaining provisions of this Amendment shall remain in full force and shall not be impaired or affected in any way, provided that the essential terms and protections for each party remain valid, binding and enforceable, and that the economic and legal substance of the transactions contemplated herein are not affected in any manner adverse to either party.
- h. Choice of Law: This Agreement will be interpreted and enforced pursuant to the laws of the Commonwealth of Pennsylvania, with jurisdiction to be in the courts of Pittsburgh, PA.
- i. Attorneys' Fees and Costs: If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which the party is entitled.

The parties hereto agree, and execute this Agreement as of the date set forth above.

**Festival Fun Parks, LLC dba Kennywood**

By: \_\_\_\_\_  
Joseph J. Barron - HR Director

**Charity** on behalf of itself and all of its volunteers

\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title