

RESTAURANT AGREEMENT

This Agreement made this ____ day of _____, 20__ between A TASTE OF BUFFALO, INC. (“Taste”), a not-for-profit corporation with a mailing address c/o 10 Streamview Lane, Lancaster, New York 14086 and _____ (“Restaurant”), with a principal place of business at _____.

Cumulatively, Taste and Restaurant are referred to herein as the “Parties.”

WHEREAS, Taste will conduct an annual open-air food festival in Buffalo, New York on July 8 and 9, 2017. (Referred to herein as the “Festival Year”); and

WHEREAS, Restaurant has submitted an application to Taste to participate in the Festival subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. DEFINITIONS

1.1 “Restaurant” is defined as a public eating place, whose primary commercial function is to serve food on a retail basis, which offers seating at the Restaurant’s principal place of business and is open year round in Western New York.

1.2 “Festival Site” shall mean Delaware Avenue between Chippewa Street and Niagara Square, Buffalo, New York, unless another Buffalo area location has been designated and agreed to in writing between the Parties.

1.3 “Event Start” Time shall be 11:00 a.m. on the Saturday of the Festival during any Festival Year.

1.4 “Tent Structure” will refer to a single frame tent which, when erected, will measure at least 225 square feet and will provide Restaurant with a minimum of fifteen (15) feet of frontage from which Restaurant will serve its menu items to the general public at the Festival.

1.5 “Restaurant Vending Location” will refer to the allocation of space provided to Restaurant under the canopy of the Tent Structure as well as an additional 10 feet as measured from one side of the Tent Structure, extending on either the left or right side of tent, as designated by the Taste, as viewed from Delaware Avenue or Niagara Square, for the placement of open flame grills, griddles, deep fryers and any other cooking equipment and the restaurant shall not place any equipment or extend their workspace beyond the front or the back of the tent. Restaurant must notify Taste by May 15, 2017, if a pop up tent will be used. Failure to do so will result in an additional fee of \$250. Taste reserves the right to amend this additional footage where permanent physical obstructions located along the Festival Site deem this allocation impossible or impractical.

1.6 “Restaurant Committee” will refer to the committee of volunteers, which will be chaired by a member(s) of the Board of Directors of the Taste. The Restaurant Committee will

act as the primary liaison between Restaurant and the Taste and will coordinate and supervise the Restaurant's participation in the Festival.

2. PARTICIPATION IN THE FESTIVAL

2.1 Restaurant agrees to prepare items of food at the Festival, or have items of food prepared and brought to the Festival, and offer those items for sale to the general public at the Festival. Restaurant hereby warrants that all items of food offered for sale to the general public at the Festival are items that are offered on the Restaurant's regular menu or are house specials at the Restaurant's principal place of business.

2.2 Restaurant agrees to pay an **Entry Fee** to Taste in one of the following options:

A) **“Early Entry Fee” One Time Payment:** The Early Entry Fee of \$600 is payable in full by February 1, 2017 and should be remitted with this signed agreement.

If payment in full is not received by February 1, 2017 the restaurant shall forfeit the “Early Entry Fee” option and will be responsible for the “Standard Entry Fee” of \$700.

B) **“Standard Entry Fee”:** The Standard Entry Fee of \$700 is payable in two installments. The first installment of \$300.00 is due on or before February 1, 2017 along with this signed agreement. The remaining balance of \$400 is due on or before March 1, 2017. Payment in full of \$700.00 must be received on or before March 1, 2017 for restaurant to be confirmed as a festival participant. If full payment is not received by March 10, 2017 restaurant shall forfeit its \$300 deposit and will not be eligible to participate in the festival.

2.3 The restaurant agrees to pay to the Taste eighteen percent (18%) of the gross sales receipts generated by Restaurant at the Festival.

2.4 Restaurant agrees that the Entry Fee is for one Tent Structure and only the additional footage necessary for open flame grills, etc. as defined in “Restaurant Vending Location,” above.

2.5 Upon acceptance into the festival, restaurant may request approval for a Double Tent Structure. All requests are subject to availability and must receive prior approval by Taste. Upon approval, an additional fee of \$600.00 is payable on or before February 1, 2017 or \$700.00 payable on or before March 1, 2017. A Double Tent Structure will allow for a minimum of 30 feet public serving frontage and a maximum of 30 feet public serving frontage, as well as an additional 10 feet as measured from one side of the Tent Structure, extending on either the left or right side of the tent (not both sides), as designated by the Taste, as viewed from Delaware Avenue, for the placement of open flame grills, griddles, deep fryers and any other cooking equipment and the restaurant shall not place any equipment or extend their workspace beyond the front or the back of the tent. Taste reserves the right to amend this additional footage where permanent physical obstructions located along the Festival concourse deem this allocation impossible or impractical.

2.6 Taste agrees to provide services in connection with Restaurant's participation, the performance of both parties subject to the terms and conditions set forth herein.

3. ITEMS TO BE SERVED AND PRICES TO BE CHARGED

3.1 Restaurant shall be permitted to serve a minimum of three (3) and no more than four (4) food items. Restaurants may, however, serve different sized portions of the same item. A minimum of one smaller sized "Taste" portion of the restaurant's signature menu item is required and MUST be sold at \$2.00. One item shall be a Taste of Buffalo certified "Healthy Option" as outlined by the guidelines set forth by the Taste of Buffalo, or their designee. For purposes of counting the number of food items served, different sized portions of the same item will be considered one item.

3.2 The items to be served and the prices to be charged shall be submitted in writing to the Taste Restaurant Committee on the Taste Restaurant Menu Item Sheet. Restaurant agrees that all items to be served and prices to be charged are subject to prior approval by Taste.

3.3 Subject to prior approval by the Taste, Restaurant will have the right to serve the same items as it served at the immediately preceding year's Festival if Restaurant submits payment in full with a fully executed original of this contract on or before February 1, 2017, menu items with pricing, and all other necessary completed paperwork on or before March 1, 2017. If Restaurant does not submit the items as required, the Taste cannot guarantee menu item protection or participation in the event.

3.4 The prices to be charged by Restaurant shall not be less than \$1.00 or greater than \$5.00 per item. Prices to be charged shall include appropriate sales tax. Prices shall be in \$.50 increments only. Signature Item may be served for up to \$5.00, Up to two (2) food items may be served at \$4.00, the other one (1) or two (2) food items shall be served between \$1.00 and \$3.50, inclusive. One (1) "taste" size portion of the restaurant's signature menu item shall be served for \$2.00.

3.5 Once approved in writing by Taste, items to be served and prices to be charged shall remain in effect throughout the Festival and may not be altered, unless agreed to in writing by the Parties.

3.6 Any Restaurant not in compliance with section 3.5 will be considered in default of the terms of this Agreement and the Taste will request that sale of the non-approved item(s) be discontinued and/or price(s) changed to reflect those previously approved. If Restaurant does not comply within one hour, the Taste will exercise its rights under section 9.0 and close down the Restaurant booth for the remainder of the Festival.

4. DUTIES OF TASTE

4.1 **Menu Item Protection:** Taste agrees to provide returning Restaurant's menu items and event participation protection if the requirements mentioned above in Sections 3.3 and 2.2 B are met.

4.2 **Returning Restaurant Vending Location Preference:** Taste agrees to provide Restaurants who participated in the 2016 festival with preference in securing the same vending location as was held the 2016 festival year. In the situation where disputes may arise, the

returning Restaurant with the most seniority in the Festival will be given preference. The Taste reserves the right to make final decisions in the placement of all Restaurant Vending Locations.

4.3 **Non-Duplication of Items:** Taste will use its best efforts to avoid duplication of items sold at the Festival. Restaurant agrees that what deems a duplication of items is in the sole discretion of the Restaurant Committee and the Taste.

4.4 **Restaurant Vending Location:** Taste shall provide the following to Restaurant:

- A single Tent Structure as defined above
- Side flaps sufficient to cover three sides of the Tent Structure
- One professionally lettered sign identifying Restaurant's name
- Adequate stabilizing material in order to support the Tent Structure
- Ongoing maintenance to the Tent Structure.

4.5 **Double Tent Structure Requests:** When requested in writing and pursuant to Section 2.5 above, a Double Tent Structure that will meet the criteria as defined in Section 4.4

4.6 **Utilities**

A) **Electric:** Taste shall provide electrical power through four outlets with 60 amps at 110 volts. Additional electrical power including 220-volt lines must be requested in writing by March 1, 2017 and shall be provided to Restaurant by Taste at an extra charge.

B) **Water:** Taste shall provide a central source of running water that shall be accessible to all of the restaurants.

C) **Sanitation:** Taste shall maintain garbage pick-up service for Restaurants' garbage disposal at the Festival Site.

5. **DUTIES OF RESTAURANT**

5.1 **Restaurant Vending Location – Generally**

A) Restaurant shall be solely responsible for the safekeeping of its Restaurant Vending Location and any Additional Space Allocations and the Taste shall have no responsibility for any loss or damage to the Restaurant Vending Location or the property of the Restaurant located therein.

B) In circumstances where Restaurant is utilizing an unauthorized space allocation, Restaurant will be considered in default of the terms of this Agreement and Taste will request that use of the additional space be discontinued. If Restaurant does not comply within one hour, Taste reserves the right to deduct \$1,000 from the proceeds of the Restaurant gross revenues.

C) Food service equipment required to operate the Restaurant Vending Location as well as any and all labor and supplies, including, but not limited to, napkins, plates and utensils will be the responsibility of the Restaurant. Ice will be the responsibility of the Restaurant. (Taste will make every effort to have ice vendor available on site during the festival)

D) Restaurant shall be solely responsible for correctly identifying the amount of electrical power it requires to operate its equipment at the Festival by absolutely no later than March 1, 2017. Should Restaurant change its electrical requirements after March 1, 2017, Restaurant shall be responsible for any costs incurred by Taste in arranging for such change orders. In addition to the foregoing, if Restaurant changes its electrical requirements within 72 hours of scheduled start of the Festival, Restaurant's electrical requirements shall be served only after all requirements of other restaurants which are scheduled as of 72 hours prior to the time or the scheduled start of the Festival are serviced. Taste shall have no liability whatsoever should Restaurant be unable to operate at the scheduled start of the Festival as a result of electrical requirement change.

E) Restaurant agrees that it has the duty of care to ensure safety to the general public. Restaurant will not be permitted to erect crowd barriers or other crowd flow or control apparatus at the Restaurant Vending Location. Restaurant agrees that Taste shall have the final say on the design and quality of any sign and menu board the restaurant places on the Restaurant Vending Location.

F) Restaurant shall not have any public seating and/or cabaret tables, or live music/entertainment at the Restaurant Vending Location.

G) Restaurant shall be responsible to assure that their booth complies with any applicable law and/or regulations, including but not limited to any requirements under the Americans with Disabilities Act, and any state, federal, or local requirements.

H) Restaurant must provide a professionally lettered sign visible from 30 feet indicating cost in tickets of items served.

I) **Refrigeration** will be the responsibility of the Restaurant.

5.2 **Food Vending**

A) Restaurant will accept only tickets as payment for menu items. No cash sales will be permitted at the Festival by Restaurant.

B) It is expected that Restaurant shall do the majority of its food preparation at Restaurant's normal place of business and bring the food to be completed at the Festival site.

C) Restaurant shall serve only food at its booth. .

D) Restaurant shall bring an adequate number of portions of food to the Festival to ensure continuous operations during the entire operating hours of the Event.

5.3 **Sanitation**

A) Restaurant shall keep the area surrounding its tent clear of all garbage. Restaurant shall dispose of its garbage in the garbage container brought with them to the festival and shall not use receptacles provided for Taste patrons.

B) If Restaurant uses grease or produces grease in the preparation of its food, Restaurant shall dispose of its grease in a grease container provided by Taste or by

returning the used grease to their place of business for proper disposal. Restaurant may not dispose of grease at the Festival Site in any other manner whatsoever. Doing so will constitute default and trigger the accompanying penalties as listed in Section 9 of this Agreement. Restaurant shall be liable for any associated clean up or damage costs associated in any way with grease spillage or disposal outside of terms of this section.

C) If Restaurant uses grease or produces grease and the Taste deems it necessary for the use of a grease ground cover; it must use the restaurant-supplied grease ground covering to ensure that the pavement in the immediate vicinity of the Restaurant's booth is not damaged to any extent. The Taste at its sole discretion will determine the need for grease ground cover.

D) Restaurant shall safely dispose of all hot embers and charcoal in the Taste supplied trash barrel only after thoroughly dousing with water.

E) Restaurant shall comply with all state, city and county requirements governing the operation of its booth, including, but not limited to, regulations regarding health and fire code ordinances.

F) Restaurant shall not conduct dishwashing activities at the Festival Site

5.4 **Restaurant Vending Location Setup and Takedown**

A) Restaurants may enter the footprint and begin setup of their booths no sooner than 5:30 a.m. on Saturday morning, the first day of the Festival.

B) Restaurants will affix all signage (other than Taste-provided sign) or other decorations directly to the tent frame, ensuring safety to the general public and will not place freestanding decorations, signs or other material in front of or alongside of Restaurant Vending Location. Damage or cleaning charges by Tent Vendor will be the responsibility of the Restaurant.

C) Restaurant shall comply with all rules issued by Taste regarding setup and takedown of booths including, but not limited to, rules regarding timing of loading and unloading.

D) Restaurants agree to have all Restaurant trucks off the Festival site between the hours of 10:00 a.m. and 9:30 p.m. or later if deemed necessary by the Taste Security Committee Chairman on Saturday, and 10:00 a.m. and 8:00 p.m., or later if deemed necessary by the Taste Security Committee Chairman on Sunday of the Festival. Failure to comply will result in loss of Taste participation as outlined under section 9.0 – Default, B – Remedies, Number 2, and close down the Restaurant booth for the remainder of the festival and all future festivals participation denied.

E) Restaurant shall leave its tent and surrounding area in good condition, cleaned of any soot and grease that may accumulate on tent. Failure to comply will result in Taste deducting the cost of cleaning from Restaurant's share of the sales.

F) Restaurant must have booth area inspected and approved by a Restaurant Committee member before turning in tickets to be counted on Sunday night.

G) Restaurant shall be ready to sell its products by 11:00 a.m. on both days of the Festival and run continuously through Festival operating hours. Restaurant may not close early and/or begin break down of their area until festival is closed.

6.0 ACCOUNTING

6.1 All sales of food by Restaurant will be made through tickets purchased by patrons from Taste and Restaurant shall make no cash sales of any kind.

6.2 Restaurant is solely responsible for collection and storage and handling of all tickets collected until tickets are weighed and turned over to Taste.

6.3 Restaurant shall keep all tickets collected in a watertight container and Taste reserves the right to reject any ticket that is wet or mutilated. Restaurants submitting wet or damaged tickets may be fined by Taste.

6.4 At the completion of the Festival, Taste shall:

A) Total all tickets received by making two separate weighings of the tickets; however, Restaurant reserves the right to count its tickets by hand under Taste's supervision.

B) Subtract Taste's 18% portion of the Restaurant's gross sales.

C) Subtract and remit the appropriate New York State sales tax.

D) Subtract any cleaning charges incurred by Taste relating to Restaurant, if applicable.

E) Subtract any other additional charges incurred by Restaurant for booth furnishings, if applicable.

F) If applicable, subtract any application fee monies still outstanding.

G) Remit the net proceeds to Restaurant within thirty (30) business days after the completion of the Festival unless there are unresolved problems regarding charges to Restaurant in which event the net proceeds shall be retained by Taste until such problems are resolved.

7.0 INSURANCE

Restaurant shall have general liability insurance coverage with the following minimum limits: \$1,000,000 for bodily injury and property damage per occurrence and aggregate; \$500,000 for injury to property. The Taste shall be named as a named additional insured on such

insurance providing first dollar coverage to Taste for the Festival Event. Proof of general insurance liability shall be furnished to Taste no later than May 15, 2017. Additionally, proof of worker's compensation insurance should be provided for all "employees" working at the Festival Event.

8.0 PERMITS

Restaurant shall submit to Taste all fully completed applications for necessary permits and licenses to operate its booth at the Festival no later than March 1, 2017, including, but not limited to, applications for the Health Department Temporary Food Stand Permit. Taste shall arrange for issuance of permits at Taste's expense.

9.0 DEFAULT

9.1 Defaults by Restaurant:

- (1) Failure of Restaurant to participate in Festival;
- (2) Failure of Restaurant to comply with any of the terms and conditions of this Agreement

9.2 Remedies for Taste:

(1) In the event Restaurant determines it is unable to participate in the Festival, written notice of intent not to participate must be given by Restaurant to Taste on or before May 15, 2017 or the Restaurant Entry Fee will be forfeited. In addition, if Restaurant has requested Taste to provide additional booth furnishings (i.e., Double Tent); Restaurant shall also pay to Taste any actual hard costs incurred by Taste in procuring such additional furnishings.

(2) In any event Restaurant fails to comply at any time at the Festival with the terms of and conditions of this Agreement or any rules and regulations issued pursuant thereto, which failure is not remedied within one (1) hour after notification by any member of the Taste Board of Directors to Restaurant, Restaurant's booth shall be closed and Restaurant shall not participate in the Festival of any further. Taste shall account to Restaurant for any sales made by Restaurant to that time but shall have no further liability to Restaurant.

(3) In the event Restaurant's participation during the Festival is impaired or prohibited by the action of any governmental entity, Taste shall account to Restaurant for any sales made prior to cessation of Restaurant's operations but shall have no further liability to Restaurant.

9.3 Defaults by Taste:

- (1) Failure to secure necessary permits and operating authority prior to Event Start Time.
- (2) Failure to comply with the terms and conditions of the Agreement.

9.4 Remedies for Restaurant:

(1) If Taste fails to secure the necessary permits and operating authority prior to Event start Time, Restaurant may cancel this Agreement upon written notice to Taste and Restaurant's Entry Fee shall be refunded, but Taste shall have no further liability of any kind to Restaurant, including liability for consequential damages of any kind.

(2) If Taste fails to provide services as provided for in this Agreement, Restaurant may, upon six (6) hours notice of the Taste Restaurant Committee of such non-compliance and failure of Taste to remedy same, cancel this Agreement. Taste shall account to Restaurant for sales made to that point and shall refund, a pro-rata portion of Restaurants Entry Fee (based on time of operation), but Taste shall have no further liability for consequential damages of any kind.

9.5 Dispute Resolution

The Parties may request that a Grievance Committee review a matter if they feel that a violation of this Agreement has occurred. In the case where a Restaurant Committee member or a member of the Taste Board of Directors feels a violation has occurred, Taste shall appoint a Grievance Committee of three persons to be the final arbiter of grievances of either party to this Agreement. The decision of the Grievance Committee is final.

10. COVENANTS OF RESTAURANT.

10.1 Restaurant is an independent contractor and, as such, is solely responsible for its acts and omissions prior to, during and after the Festival. Restaurant is solely responsible for the conduct of its employees, agents, or servants and shall indemnify, defend and hold harmless Taste, its directors and officers, Sell-utions, Inc., its employees, Buffalo Place, Inc. its Employees, officers and agents and the City of Buffalo, its employees, officers and agents from any and all liability to third parties, including but not limited to, patrons and other restaurants at the Festival, arising out of acts of omissions of Restaurant.

10.2 Restaurant shall apprise each employee, agent and servant acting for Restaurant at the Festival of the terms and conditions contained in this Agreement.

10.3 Restaurant is solely responsible for complying with all local laws and ordinances governing Restaurant's participation in the Festival and for apprising its employees, agents and servants of same and Taste shall not be responsible for decisions of governmental entities which impair, inhibit or prohibit Restaurant's participation in the Festival.

11. SEVERABILITY

Shall any term or condition of this Agreement be found invalid or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby but shall remain in full force and effect.

12. ENTIRE AGREEMENT

Except for rules and regulations to be issued by Taste pursuant to this Agreement, this Agreement constitutes the entire Agreement between parties and supersedes any prior agreements. Amendments to or modifications of this Agreement shall be valid and enforceable only if contained in writing and signed by both parties.

13. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

A TASTE OF BUFFALO, INC.

By _____ Date: _____
(signature)

Print name: _____

Title: _____

RESTAURANT

By: _____ Date: _____

(signature)

Print Name: _____

Title: _____